TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER [illegible]

(26,261)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 794.

CHRISTOPHER L. WILLIAMS, AS RECEIVER OF THE FIRST NATIONAL BANK OF BAYONNE, NEW JERSEY, PLAINTIFF IN ERROR,

vs.

MARY A. VREELAND.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 22, 1917.

a United States Circuit Court of Appeals for the Third Judicial Circuit.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff-Appellant,

against

MARY A. VREELAND, Defendant-Appellee.

RECORD ON APPEAL.

Barber, Watson & Gibboney, Attorneys for Appellant, 165 Broadway, New York, N. Y.
Pierre P. Garven, Attorney for Appellee, 586 Newark Ave., Jersey City, N. J.

1 *Summons.*

UNITED STATES OF AMERICA,
District of New Jersey, ss:

The President of the United States of America to Mary A. Vreeland, 29 East 33rd Street, Bayonne, N. J.:

You are summoned to answer the annexed complaint of Christopher L. Williams, as Receiver of the First National Bank of Bayonne, in an action at law in the District Court of the United States for the District of New Jersey. And take notice that unless you file your answer to said complaint with the Clerk of the District Court of the United States, for the District of New Jersey, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness the Honorable John Rellstab, Judge of said Court, at Trenton, this 9th day of February, A. D. nineteen hundred and sixteen.

[SEAL.] GEORGE T. CRANMER,
Clerk,
By R. S. CHEVRIER,
Deputy.

2 *Complaint.*

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

The plaintiff above named by Barber, Watson & Gibboney, his attorneys, complaining of the above named defendant respectfully shows and alleges, upon information and belief:

First. The First National Bank of Bayonne, at all the times hereinafter mentioned, was and now is a national banking association duly organized and existing under and by virtue of the banking laws of the United States of America, and during all of said time had an authorized capital of One hundred thousand dollars ($100,000) consisting of one thousand shares of stock of the par value of One hundred dollars ($100) each. That said banking association was duly authorized to commence business as a national banking association, and did so commence its business on or about December 6, 1906, in the City of Bayonne, County of Hudson, State of New Jersey, and continued conducting said business until the appointment of a receiver thereof, as hereinafter set forth.

3 Second. That on the 6th day of December, 1913, the doors of the said banking association were closed by order of the Comptroller of the Currency of the United States, and the said Comptroller, having become satisfied of the insolvency of the said banking association, under and pursuant to the provisions of Section I of an act of Congress entitled "An Act authorizing the appointment of receivers of national banks, and for other purposes," approved June 30, 1876, otherwise known as Section 183 of the National Bank Act, duly appointed Charles H. Chapman receiver of the said banking association on December 8, 1913. Said Charles H. Chapman qualified as receiver and took charge of the assets and affairs of the said banking association, and continued as such receiver until the close of business, March 7, 1914, upon which date Frank B. Shutts duly qualified as receiver of the said banking institution having theretofore been appointed such by the Comptroller of the Currency. Said Shutts continued as such receiver of the said banking association until the close of business, June 19, 1914, at which time the plaintiff herein duly qualified as receiver of the said banking association having been theretofore duly appointed such receiver by the Comptroller of the Currency. That ever since said 19th day of June, 1914, the plaintiff has been and now is the duly appointed and qualified receiver of the said The First National Bank of Bayonne, and as such has been and now is in charge of the assets and affairs of the said banking association.

Third. The defendant above named is a citizen of the County of

Hudson, State of New Jersey, and domiciled within the district of New Jersey.

4 Fourth. That on the said 6th day of December, 1913, the defendant was a shar holder of record in said banking association. That prior to said 6th day of December, 1913, certificates for one hundred fifteen (115) shares of the capital stock of the said banking association in the name of the defendant had been duly issued and delivered, and were on that day duly registered in the name of the defendant, and are so registered. That for some time prior to the said December 6th, 1913, the defendant knew that the said certificates had been issued to her and were registered in her name on the books of the said banking association.

Fifth. That on May 13, 1914, the Comptroller of the Currency of the United States of America, having become satisfied that in order to pay the just and due debts of the said banking association it was necessary to enforce the individual liability of shareholders thereof to the extent of one hundred per cent, as prescribed by Sections 5151 and 5234 of the revised statutes of the United States, otherwise known as Sections 48 and 178 of the National Bank Act, made an assessment and requisition upon the shareholders of said banking association for One hundred thousand dollars ($100,000), to be paid by them ratably on or before June 13, 1914, and demanded from each and every one of the shareholders of the said banking association, payment of One hundred dollars ($100) upon each and every share of the capital stock of the said banking association held or owned by them respectively at the time of the closing of the doors of the said banking association, to wit, December 6, 1913, and the said Comptroller directed the receiver of the said banking association, as such receiver, to take all necessary

5 proceedings by suit or otherwise to enforce, to that extent, the individual liability of the shareholders of the said banking association.

Sixth. That thereafter the receiver of the said banking association duly demanded of the defendant the payment of One hundred dollars ($100) per share upon each of the shares of the stock registered in her name on said 6th day of December, 1913.

Seventh. That there is now due and owing upon the said assessment the sum of Six thousand Five hundred ninety-four and 13/100 dollars ($6,594.13) with interest thereon from December 21, 1915, no part of which has been paid although duly demanded.

Wherefore plaintiff demands judgment against the defendant for the sum of Six thousand Five hundred ninety-four and 13/100 dollars ($6,594.13) with interest thereon from December 21, 1915, together with the costs and disbursements of this action.

BARBER, WATSON & GIBBONEY,
Attorneys for Plaintiff.

Office & P. O. Address: No. 165 Broadway, Borough of Manhattan, New York City.

STATE OF NEW YORK,
County of New York, ss:

Christopher L. Williams, being duly sworn deposes and says, that he is the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his
6 own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

C. L. WILLIAMS.

Sworn to before me, this — day of February, 1916.

—— ——.

James Benny, Esq., having an office at 213 Broadway, City of Bayonne, County of Hudson, State of New Jersey, is hereby designated as a resident attorney upon whom process and papers in this action may be served.

BARBER, WATSON & GIBBONEY,
Attorneys for Plaintiff.

Answer.

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

Answer.

The defendant above named by Pierre P. Garven, her attorney, answering the complaint herein, says:

7 First Defense.

1. She admits the 1st, 2nd and 3rd paragraphs of the complaint.
2. This defendant denies each and every allegation of the 4th paragraph of the complaint, except that she admits on December 6th, 1913, she was a shareholder of record in said banking association, being the holder of 15 shares of the capital stock of the said banking association.
3. She admits the 5th paragraph of the complaint.
4. She admits that the plaintiff demanded of her the payment of $100.00 per share upon each of the fifteen shares of stock registered in her name on December 6th, 1913, but says that she duly paid said sum to the said Receiver, the plaintiff herein.
5. She denies the 7th paragraph of the complaint.

Second Defense.

1. She repeats the allegations of the 1st, 2nd, 3rd and 5th paragraphs of the first defense.

2. That from May 5th, 1910, to December 6th, 1913, this defendant was a shareholder of record in said banking association, being the owner of 15 shares of the capital stock of said banking association. On information and belief, that on or about Sept. 25th, 1913, William H. Vreeland, husband of this defendant, was the owner of 125 shares of the capital stock of said banking association and that on said date, the said William H. Vreeland requested the president of said banking association to make out two checks for the dividends due
8 on October 1, 1913, on said 125 shares so owned by the said William H. Vreeland, one check covering the dividend on 100 of the said shares, and the other check covering the dividend on the remaining 25 shares, said William H. Vreeland, stating to said president of said banking association that he desired to present defendant with the amount of the dividends on 100 of the said shares so owned by said William H. Vreeland. That at that time said president of said banking association informed said William H. Vreeland that the checks had already been made out and that it would be impossible to make two checks for the dividends due October 1, 1913, as requested by the said William H. Vreeland, and the president of said banking association then suggested that certificates be made out in the name of the defendant for 100 shares of said capital stock so that the check for the dividends covering said 100 shares which would be payable on January 1, 1914, would be made out to the defendant. The said William H. Vreeland consented that certificates for 100 shares be made out in the name of the defendant accordingly; That on October 1, 1913, said William H. Vreeland received the said dividend on the said 125 shares of the said capital stock of the said banking association and gave said dividend to the defendant, and at the same time he informed the defendant that the certificates for 100 shares of the said capital stock of said banking association had been made out in her name and requested the defendant to assign said certificates for 100 shares back to the said William H. Vreeland, and the defendant forthwith assigned said certificates for 100 shares to the said William H. Vreeland; That the defendant did not know that the certificates for said 100 shares of the said capital stock had been placed in her name until
9 October 1, 1913, when she assigned the said certificates to the said William H. Vreeland; That said certificates for 100 shares provided that they should not be valid unless countersigned by the Registrar, and that they were never so countersigned. On information and belief, that the certificates for the said 100 shares of the capital stock of said banking association was never registered at the Mechanics Trust Company, and the president of said banking association stated to William H. Vreeland that the certificates for 100 shares were still in the name of the said William H. Vreeland, together with the certificate for 25 shares which remained in the name of the said William H. Vreeland; That the Comptroller of the Currency heretofore and on May 13th, 1914, levied an assessment

of 100% on all the shareholders of record of said banking association who were such shareholders on December 8, 1913, and directed the plaintiff to enforce collection of the liability of said shareholders, and that in levying said assessment, plaintiff levied an assessment of 100% on 125 shares of the capital stock of said banking association as belonging to said William H. Vreeland and the said William H. Vreeland executed and delivered two mortgages to the said plaintiff as collateral security for the payment of the said assessment on 125 shares of the said capital stock of the said banking association, which mortgages were foreclosed by the Receiver and he realized about $7,200.00 on said mortgages; That said 125 shares of said banking association, upon which said assessment was levied as aforesaid, against William S. Vreeland, included the said 100 shares so placed in the name of the defendant by William H. Vreeland on or about Sept. 25th, 1913, as aforesaid.

10 Defendant demands judgment dismissing complaint with costs.

PIERRE P. GARVEN,
Attorney for Defendant,
586 Newark Avenue, Jersey City, N. J.

STATE OF NEW JERSEY,
County of Hudson, ss:

Mary A. Vreeland, being duly sworn, deposes and says, that she is the defendant herein; that she has read the foregoing answer and knows the contents thereof; that the same is true of her own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

MARY A. VREELAND.

Sworn to and subscribed before me, this 31st day of March, 1916.
IRVING LIPMAN,
Attorney at Law, of New Jersey.

11 *Docket Entries.*

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

Feb'y	9, 1916.	Summons issued.
March	22, 1916.	Summons and complaint returned; served March 18, 1916, and filed.
April	4, 1916.	Answer filed.
Sept.	5, 1916.	Notice of trial filed.
Nov.	8, 1916.	Placing case on calendar.

Dec. 1, 1916. Trial.
Dec. 4, 1916. Trial.
Dec. 12, 1916. Trial.
Dec. 19, 1916. Rule for judgment final for defendant and costs filed.
Feb'y 10, 1917. Bill of exceptions filed.
Assignment of errors filed.
Petition for writ of error filed.
Order allowing writ of error filed.
Writ of error filed.
Citation issued.

12 *Order Dismissing Complaint.*

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

vs.

MARY A. VREELAND, Defendant.

Order Dismissing Complaint.

This cause having been tried before the Honorable Thomas G. Haight, Judge of the above entitled Court, with a jury, in the presence of counsel of the respective parties, on December 11th, 1916, and the Court having directed the jury to render a verdict in favor of the defendant and against the plaintiff, and the jury having rendered its verdict in favor of the defendant and against the plaintiff, it is

Ordered, that judgment final be entered in favor of the defendant and against the plaintiff, and that the defendant have judgment and execution against the plaintiff for her costs and disbursements to be taxed by the clerk of this court.

Dated, December 19th, 1916.

THOMAS G. HAIGHT,
United States District Court Judge.

On motion of

PIERRE P. GARVEN,
Attorney for Defendant.

13 *Petition for Writ of Error.*

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

And now comes Christopher L. Williams, as Receiver of the First National Bank of Bayonne, the plaintiff herein, and says:

That on or about the 19th day of December, 1916, this Court entered judgment herein in favor of the defendant and against the plaintiff, in which judgment and the proceedings had prior thereunto in this case, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the Assignment of Errors which is filed with this petition.

Wherefore this plaintiff prays that a Writ of Error may issue in his behalf out of the United States Circuit Court of Appeals for the Third Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in
14 this cause duly authenticated may be sent to the said United States Circuit Court of Appeals.

Dated, January 25th, 1917.

STUART G. GIBBONEY,
Solicitor for Plaintiff.

Office & Post Office Address: No. 165 Broadway, Borough of Manhattan, New York, N. Y.

Assignment of Errors.

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

And now comes Christopher L. Williams, as Receiver of the First National Bank of Bayonne, plaintiff-in-error, and makes and files this his Assignment of Errors:

Assignment of Errors.

15 I.

The United States District Court for the District of New Jersey erred in directing a verdict for the defendant.

II.

The said Court erred in denying the motion made by Counsel for the plaintiff-in-error for the direction of a verdict in favor of the plaintiff.

III.

The said Court erred in receiving the evidence of the witness William H. Vreeland and permitting him to testify over plaintiff's objection as follows:

"Q. Now, then, just prior to the signing of these papers did you have any conversation with the Receiver with reference to the payment of the assessment on the 125 shares of stock?

—. ——.

Q. What conversation did you have?

Mr. Gibboney: I object to that.
The Court: I will admit it.

Plaintiff's counsel asks an exception which is hereby allowed and sealed accordingly.

THOMAS G. HAIGHT, *D. J.*

(Sealed.)

A. I told Mr. Shutts, the Receiver at that time that I had some property which was free and clear and from which I would pay my assessment on the 125 shares of stock. He asked me what it was worth, and I told him about $14,000. He said he would consider the matter for a day or two or a few days and let me know. A few days later he notified me that he would accept it and he notified Mr. Chamberlain the attorney for the Receiver at that time to draw up the paper."

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IV.

The said Court erred in receiving the evidence of the witness George Carragan and permitting him to testify over plaintiff's objection as follows:

"Q. Now go on and tell us what else transpired?
A. The next day or a day or so afterward——

Mr. Gibboney: I object to any other conversation after the stock was issued.
The Court: I will permit it.

Plaintiff's counsel asks an exception which is hereby allowed and sealed accordingly.

THOMAS G. HAIGHT, *D. J.*

(Sealed.)

A. The next day, or a day or two afterwards, he came in and he said: 'George, I think I made a mistake.'

Mr. Gibboney: Just a moment; this was after the stock was issued, Mr. Carragan?

The Witness: After the stock was issued.

A. 'I think I made a mistake in having that stock changed. I am getting a good collateral out of my hands. If I want to get any money from any other bank I want to use that as collateral.' 'Well,' I said, 'I have made the certificate out in that way. You get your wife to endorse it. It will have to go down and be registered at the Mechanics' Trust Company. It is no good as it is, it will have to be registered,' and I said, 'It will take two registrations now in order to get that through, first we will have to register them into your wife's name and then back into your own name.' 'Well,' he said, 'I will bring it in and have it changed that way.' "

Wherefore the said Christopher L. Williams, as Receiver of the First National Bank of Bayonne, prays that the judgment of the District Court of the United States for the District of New
17 Jersey be reversed, and that directions be given that the plaintiff and plaintiff-in-error have judgment against the defendant for the sum of Six thousand Five hundred ninety-four and 13/100 Dollars ($6,594.13) with interest at the rate of six per cent from December 21, 1915, together with the costs and disbursements of the action, or that a new trial be granted.

STUART G. GIBBONEY,
Solicitor for Plaintiff and Plaintiff in Error.

Office & Post Office Address: No. 165 Broadway, Borough of Manhattan, New York, N. Y.

Order Allowing Writ of Error.

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

On this 10th day of February, 1917, came the plaintiff by
18 Stuart G. Gibboney, his Solicitor, and filed herein and presented to the Court his petition praying for the allowance of a Writ of Error, an Assignment of Errors intended to be urged by him; praying also that a transcript of the record, proceedings and papers upon which the judgment was herein entered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Third Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

Ordered that the Court does allow the Writ of Error of the plaintiff, and that the filing of a bond for costs be dispensed with by

reason of this appeal being brought by direction of the Comptroller of the Currency of the United States.

Dated, February 10th, 1917.

THOMAS G. HAIGHT,
Judge.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the District Court of the United States for the District of New Jersey, Greeting:

Because in the record and proceedings, as also in rendition of the judgment on a plea which is in the said District Court before you or some of you between Christopher L. Williams, as Receiver of the First National Bank of Bayonne, plaintiff, and Mary A. Vreeland, defendant, a manifest error hath happened to the great damage of the said Christopher L. Williams, as Receiver of the
19 First National Bank of Bayonne, as is said and appears by his complaint, we being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid, in this behalf Do Command You that judgment be therein given; that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Third Judicial Circuit, together with this Writ so that you may have the same at the city of Philadelphia before the Judges aforesaid on the 10th day of March, 1917, and that the record and proceedings aforesaid being inspected the said Judges of the United States Circuit Court of Appeals for the Third Judicial Circuit may cause further to be done therein to correct that error, what of right and according to law and custom of the United States ought to be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, the 10th day of February, 1917.

[L. S.] GEORGE T. CRANMER,
Clerk,
By ROBERT S. CHEVRIER,
Deputy.

Citation.

By the Hon. Thomas G. Haight, one of the Judges of the District Court of the United States for the District of New Jersey, in the Third Judicial Circuit, to Mary A. Vreeland, Greeting:

You are hereby cited and admonished to be and appear
20 before the United States Circuit Court of Appeals for the Third Judicial Circuit to be holden at the city of Philadelphia, State of Pennsylvania, and circuit above named, on the 10th day of March, 1917, pursuant to a Writ of Error filed in the Clerk's office of the District Court of the United States for the Dis-

trict of New Jersey, wherein Christopher L. Williams, as Receiver of the First National Bank of Bayonne, is plaintiff-in-error, and you are the defendant-in-error, to show cause, if any there be, why the judgment in said Writ of Error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand in the city of Newark, State of New Jersey in the District and Circuit above named, this 10th day of February in the year of our Lord One thousand nine hundred and seventeen, and of the Independence of the United States the One hundred and forty-first.

THOMAS G. HAIGHT,
Judge of the District Court of the United States for the District of New Jersey, in the Third Circuit.

21 United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

Be it remembered that this cause came on for trial before Hon. Thomas G. Haight, District Judge, and a Jury, on the 1st day of December, 1916, and was continued on the 4th and 12th days of December, 1916, at the Post Office Building in the city of Newark, State of New Jersey.

The following counsel were present:

Stuart G. Gibboney and George M. Burditt, for the plaintiff.
Pierre P Garven, for the Defendant.

Thereupon the following proceedings were had, to wit:

A Jury was duly impanelled and sworn.
Mr. Gibboney opened to the Jury on behalf of the plaintiff.
Mr. Garven opened to the Jury on behalf of the defendant.

22 EDWARD P. RUSSELL, a witness called on behalf of the plaintiff being duly sworn testified as follows:

Direct examination:

I was connected with the First National Bank of Bayonne, from 1903, and at the date of its closing, December 8, 1913, was assistant cashier. I identify a book shown to me and which I brought to this court, as the stock ledger of said bank.

Received in evidence and marked Exhibit P-1.

The Witness: The assessment levied by the Comptroller of the Currency was 100 per cent and upon 115 shares of stock would be $11,500. The record indicates that 100 shares of stock were trans-

ferred from William H. Vreeland September 25, 1913. The book I am now shown is the stock certificate book of the First National Bank of Bayonne.

Received in evidence and marked Exhibit P-4.

The Witness: Certificate No. 92 is for 50 shares of stock and is dated June 1, 1910. The transfer certificate on the back is dated September 2, 1913, and is signed by William H. Vreeland in the presence of George Carragan. Certificate No. 106 dated April 1, 1912, 42 shares in the name of William H. Vreeland transferred to Mary A. Vreeland. Transfer certificate signed by William H. Vreeland dated June 9, 1913. Certificate No. 110 for 8 shares dated October 21, 1912, in the name of William H. Vreeland transferred to Mary A. Vreeland. Transfer certificate signed by William
23 H. Vreeland dated June 9, 1913. The stubs in Exhibit P-4 with regard to the reissue of the 100 shares of stock to which I have referred are as follows: Certificate No. 124 appears to have been issued for 50 shares September 25, 1913, to Mary A. Vreeland, Bayonne, New Jersey. Receipt for above described certificate September 25, 1913, Mary A. Vreeland. Stub of certificate No. 125 for 50 shares dated September 25, 1913, issued to Mary A. Vreeland, Bayonne, New Jersey. Receipt for above described certificate September 25, 1913, Mary A. Vreeland.

I am not familiar with Mrs. Vreeland's handwriting. I don't think the signature "Mary A. Vreeland" upon the receipt is in the handwriting of Mr. Vreeland. The book I am now shown is the check book from which dividend checks to shareholders of the First National Bank were made out. The checks were made out some time prior to the actual payment of the dividends. A check dated October 1, 1913, payable to the order of William H. Vreeland for $312 is a dividend check of the First National Bank of Bayonne for the dividend declared October 1, 1913, on 125 shares of stock. The check is endorsed "William H. Vreeland" and "Mary A. Vreeland". That check was deposited in the First National Bank of Bayonne to the account of Mary A. Vreeland October 1, 1913, and is part of a deposit for $350. Her account was opened September 29, 1913.

It is admitted that the endorsement "Mary A. Vreeland" is in her handwriting.

Check is received in evidence and marked Exhibit P-5.

The Witness: The book I am now shown is the minute book of the board of directors of the First National Bank of Bayonne.
24 In the meeting of September 2nd, 1913, a resolution introduced by Mr. George B. Gifford is as follows:

"Resolved that a regular quarterly dividend of two and a half per cent on the paid in capital of the First National Bank of Bayonne be and is hereby declared and ordered distributed on the 1st day of October next to shareholders of record on September 28th instant; that the stock transfer books of the First National Bank be closed from September 27th instant until 9 o'clock in the morning of Octo-

ber 3rd proximo, and that notice of such dividend be advertised in the Bayonne Evening Times."

The dividend checks were drawn shortly after the passage of that resolution. I mailed certain envelopes which were handed to me by Miss Kelly the stenographer at the bank, containing a demand on the stockholders for the payment of an assessment levied by the Comptroller of the Currency. There was a demand directed to Mrs. Vreeland among the letters which I mailed.

Cross-examination:

There were 54 stockholders of record. I mailed the notices May 13, 1914, between 4 and 5 o'clock. I recollect that there were 54 mailed. Do not remember there was exactly 54 because I did not count them, but recollect mailing a notice to all of the 54. Cannot say what sort of a day it was, the 13th of May, 1914; do not know whether it was rainy or sunny at that time. I suppose I was in the bank at 2 o'clock of that day but I am not sure; I was there at 3 o'clock because I was there every day, and because of the fact that I was there every day refreshes my recollection that I was there at that time. I checked them back from a list that I had tacked
25 up on my desk to see that there was a notice for each one. I knew that the list was a correct copy of the names of the stockholders of record. I had it made up by Miss Kelly. I will say that it was absolutely correct. I knew that the dividend checks were to be prepared in the names of the stockholders of record on September 27th. This dividend was payable in the name of Mrs. Vreeland. I would say that the signature upon the back of certificate No. 92—the name of William H. Vreeland is in his handwriting; also certificate No. 6. I should say that the writing "Mary A. Vreeland" on the stub No. 124 is not in Mr. Vreeland's handwriting; likewise 125. I am not familiar with Mrs. Vreeland's handwriting.

Certificates No. 124 and 125 received in evidence and marked respectively Exhibits P-6 and P-7.

Emily F. Kelly, a witness called on behalf of the plaintiff being duly sworn testified as follows:

I am employed by the Union Trust Company of Jersey City. Prior to the appointment of a receiver of the First National Bank of Bayonne I was a stenographer in that bank, and had been there for six years. I was continued as stenographer in the employ of the receivers until April 15th. I have seen the stock ledger, Exhibit P-1, many times. I filled in the demands for the payment of the stock assessment upon the stockholders of the First National Bank of Bayonne, obtaining my information from the stock ledger, Exhibit P-1.

26 Plaintiff's counsel calls upon defendant's counsel to produce a printed notice of assessment by the Comptroller of the Currency and the demand from the receiver which was sent to Mrs. Vreeland.

Defendant's counsel states that Mrs. Vreeland had no recollection of having received any notice.

The Witness: The printed notice of assessment and form of demand which I am now shown is the form of the one which I sent out to the various stockholders. I filled in the number of shares on which the assessment was due, the name of the stockholder and the address. It was signed by the receiver Mr. Shutts. I filled out such a demand in the case of Mrs. Mary A. Vreeland and filled in as the number of shares 115. My information was taken from the stock ledger. I turned over the demand to Mr. Russell for mailing. The demand was in an envelope addressed to Mrs. Vreeland at Bayonne. That was the address I had on the record at the time. By looking at the stockledger I state that the number of shares for which I filled out a notice to William H. Vreeland was 25.

The blank form of demand identified by witness was received in evidence and marked Exhibit P-8.

Cross-examination:

I don't recall each notice individually which I prepared. I did not prepare or assist in preparing dividend checks in October, 1913. I presume I did mail them. I don't recall seeing the stockledger in October, 1913. I do recollect having seen it at other
27 times. I used the book as my guide to take the names and addresses and so on for any kind of a notice that was mailed to the stockholders. I usually saw the record at the time a statement was issued, four or five times a year.

GEORGE M. BURDITT, a witness called on behalf of the plaintiff being duly sworn testified as follows:

Direct examination:

I am an attorney and counsellor at law admitted to practice in this Court, and am associated with the firm of Barber, Watson & Gibboney. I have had charge of this action. I can state from checks which came to Barber, Watson & Gibboney, and passed through my hands, and letters accompanying them, the amounts which have been paid by Mrs. Vreeland or for her benefit on account of the stock assessment levied by the Comptroller of the Currency on the 115 shares of stock purporting to stand in her name on the books of the bank. On December 22, 1915, there came from Albert Bollschweiler, United States Marshal $1,111.08; December 22, 1915, Albert Bollschweiler, United States Marshal $4,339.20; January 21, 1916, Pierre P. Garven on account of principal of the assessment $388.92. That is all which has been paid to me personally, or of which I have personal knowledge.

Cross-examination:

The payment on January 21, 1916, was not in full settlement of a suit brought against Mary A. Vreeland for the assessment on 15 shares of stock. There never was such a suit, and I did not
28 sign such a stipulation discontinuing it. The paper which you show me was signed by me and is a discontinuance of

an action, but it is not a discontinuance of an action which
brought against Mary A. Vreeland and William H. Vreeland
recover the assessment on 15 shares of stock.

Paper marked for identification Exhibit D-1.

The Witness: The paper I am now shown was dictated by me.
is a complaint in a suit to recover the deficiency on a bond given
secure the assessment on 15 shares of stock, assessed against M
Vreeland. That is the suit which was discontinued at the time
the payment January 21, 1916. The payment on December
1915, for $1,111.08 was the proceeds of sale of certain real est
sold under foreclosure by this Court. There was a suit institu
to recover the deficiency growing out of that foreclosure and I h
just identified the complaint in that action. The paper I am n
shown was drawn in the office of the firm I represent.

Paper marked Exhibit D-2 for identification.

The Witness: The suit represented by Exhibit D-2 is to reco
a deficiency arising after the sale of two parcels of real estate wh
were mortgaged to one receiver of the First National Bank of B
onne, and is the balance of an assessment on 125 shares of the cap
stock of the First National Bank of Bayonne.

By the Court:

As I take it from the records it was assessed against William
and Mary A. Vreeland.

29 By Mr. Garven:

The complaint is on information and belief. The paragraph
lating to the ownership of the stock is paragraph five and reads
follows:

"That on the 6th day of December, 1913, and for some time pr
thereto the defendant William H. Vreeland was and had been
owner of 125 shares of the capital stock of the First National Bank
Bayonne issued and delivered to him prior to the said 6th day
December, 1913, and had been so registered in his name. That
the said 6th day of December certificates for 25 shares of the cap
stock of the said First National Bank of Bayonne were registe
in the name of William H. Vreeland and the remaining 100 sha
of the said the capital stock of the First National Bank of Bayo
so owned by the said defendant were registered in the name of M
A. Vreeland, wife of the defendant, to whom the said shares w
transferred by the defendant on the 25th day of September, 19
That the said defendant is the owner and holder of said 125 sha
of the capital stock of the First National Bank of Bayonne."

There were two bonds and mortgages, one covering two parcels
real estate and as security for the assessment on 125 shares of sto
the other covering one parcel of real estate and as security for the
sessment upon 15 shares of stock. I identity the complaint in

action to foreclose the mortgage given as security for the assessment on the 125 shares of stock.

Marked Exhibit D-3 for identification.

The Witness: The $1,111.08 was the proceeds of sale upon the mortgage given to secure the payment of an assessment on 15 shares of stock which the mortgage or the bond (I have forgotten
30 which) declared belonged to Mary A. Vreeland. That payment was in part payment of the assessment on 15 shares of stock in the name of Mary A. Vreeland. The payments of $1,111.08 and $388.92 made up the $1,500 assessment on 15 shares of stock in the name of Mary A. Vreeland. The balance of the payment made January 21, $156.49 was interest and costs in that suit. I alleged in that suit, paragraph five, that Mary A. Vreeland was the owner of 15 shares of the stock of the First National Bank of Bayonne.

I obtained the information that Mrs. Vreeland was the owner of 15 shares of stock of the bank from the books of the bank, correspondence of the receiver and conferences with Mr. Russell. I don't think I had seen the stock book when I started the actions. I obtained the information as to the stock in the name of and held by William H. Vreeland in the same way. I did not prepare the bond and mortgage. They were prepared before our firm was retained. I did have charge of the foreclosure proceedings, and in connection with these proceedings had occasion to see the bonds and mortgages; that was prior to the institution of the suit for the deficiency. I noticed that the bond given by William H. Vreeland was as collateral security for the assessment on 125 shares of stock owned by him. I foreclosed that mortgage upon Mr. Vreeland's failure to pay, and there was recovered $7,072.53. It was an individual bond of Mr. Vreeland for $25,000. The bond recites that it is as collateral security for an assessment of $12,500 on 125 shares owned by Mr. Vreeland. I prepared the complaint, Exhibit D-3, and obtained my information from several sources, Mr. Carragan, my recollection is from Mr. Vreeland, Mr. Williams and Mr. Russell and the mortgages.

31 On December 22, 1915, I received from the United States Marshal $7,072.53; the difference between $4,339.20 and $7,072.53 was applied in payment of the assessment on the 25 shares of stock standing in the name of William H. Vreeland, and on the other 100 shares of stock I only applied the sum of $4,339.20; that was an arbitrary division on my part.

By the Court:

I deducted from the $7,072.53 an assessment of $2,500 and interest on that assessment of $233.33, leaving a balance of $4,339.20. I was aware of the fact that there was a registry book in the bank in which stock certificates were registered. I refer to the stock ledger which contains a registry of the stock. I call that the registry book of the bank. I understand the Mechanics Trust Company keeps a registry book or registry sheets. I have never seen the book. I saw some pages here at court.

Redirect examination by Mr. Gibboney:

I drew the pleadings in this case. I have had a number of conferences with Mr. Vreeland. I don't recollect what was the result of the first conference. I was advised that he was the Vice-President of the First National Bank of Bayonne.

By the Court:

A mortgage was given by Mr. and Mrs. Vreeland to secure a bond for $25,000 given by Mr. Vreeland individually, and in that bond there is the following recital:

"This bond is given to secure the payment of an assess-
32 ment upon 125 shares of the capital stock of the First National Bank of the City of Bayonne, a National Banking Association formed under the National Banking Act owned by William H. Vreeland."

That bond is dated June 13, 1914, the mortgage the same day, and the latter recorded in Hudson County Register's office June 20, 1914, book 828 of mortgages, page 110, etc. The mortgage covers two parcels of real estate.

The bond and mortgage received in evidence and marked Exhibit P-2.

The Witness: On the same day there was given a mortgage by Mary A. Vreeland and William H. Vreeland to secure a bond in which they were joint obligors to secure the payment of $1,500, and in that bond there was a recital as follows:

"This bond is given to secure the payment of an assessment upon 15 shares of the capital stock of the First National Bank of the City of Bayonne, a National Banking Association formed under the National Banking Act owned by Mary A. Vreeland."

That mortgage was recorded June 20, 1914.

Received in evidence and marked Exhibit P-3.

The Witness: That mortgage covered one parcel of real estate. Two separate actions were brought to foreclose the two mortgages, and in the suit on Exhibit P-2 I received from the United States Marshal/ $7,072.53 representing the net proceeds of sale of the premises. On the same day I also received from the Marshal/ $1,111.08
being the net proceeds of the sale of the property secured by
33 the mortgage Exhibit P-3. Thereafter I instituted for the present receiver in this court an action at law on the bond, Exhibit P-2, to recover the deficiency between the amount recovered from the Marshal/, namely $7,072.53, and the amount due on the mortgage, Exhibit P-2, $12,500, plus interest to wit, $5,427.47. That action was against William H. Vreeland.

At the same time I instituted an action against Mary A. Vreeland in this Court to recover the deficiency on the bond, Exhibit P-3, and subsequently on January 21, 1916, Mr. Garven paid the deficiency on the last named bond for which the suit which I have last named

was brought, that payment exclusive of interest and costs being $388.92, so that the whole amount of the second bond has been paid.

The suit against William H. Vreeland to recover the deficiency on the bond, Exhibit P-2, has not been prosecuted. Mr. Vreeland was adjudicated a bankrupt.

It was stipulated that William H. Vreeland was duly adjudged a bankrupt by this Court, January 29, 1916.

The Witness: Further proceedings by reason of the bankruptcy have not been prosecuted against Mr. Vreeland individually to recover the deficiency.

By Mr. Gibboney:

The only suits against Mr. Vreeland were, first, the action to foreclose the mortgage, and then the suit to recover the deficiency on the bond. There was never any action against him based directly upon a stock assessment. The bonds and mortgages were given to Mr. Shutts; he was the receiver in charge before
34 this plaintiff. Mr. Williams qualified June 19, 1914. The bonds and mortgages to which I have referred were given prior to his qualifying as receiver. The total amounts collected in the several Vreeland suits is $8,731.04. $1,500 was applied on account of stock standing in the name of Mary A. Vreeland, and was the exact amount of an assessment upon 15 shares of stock admittedly owned and held by her. Of the $7,072.53 received from the United States Marshal $2,733.33 was applied to the 25 shares of stock standing in the name of William H. Vreeland, and $4,339.20 to the stock standing in the name of Mrs. Vreeland. No other collections were made by Barber, Watson & Gibboney, and I know of none by the receiver. This present suit against Mrs. Vreeland was not instituted until after Mr. Vreeland was adjudicated a bankrupt.

Recross-examination by Mr. Garven:

This present suit against Mrs. Vreeland was instituted after the discontinuance of the suit against Mrs. Vreeland to recover the deficiency on the bond. The bonds and mortgages were recorded with the Register of Hudson County the day after Mr. Williams took charge of the affairs of the bank.

Mr. Gibboney: I offer in evidence the By-Laws of the First National Bank of Bayonne as the same appear on pages 89-93 of the Minute Book heretofore identified by the witness Russell.

The Court: Read the provision regarding transfers; on page 92 appears this section of the By-Laws headed "Transfers of stock".

35 The stock of this bank shall be assignable and transferable only on the books of this bank, subject to the restrictions and provisions of the National Banking laws; and a transfer book shall be provided in which all assignments and transfers of stock shall be made.

Sec. 18. Transfers of stock shall not be suspended preparatory to

the declaration of dividends; and, unless an agreement to the contrary shall be expressed in the assignments, dividends shall be paid to the shareholders in whose name the stock shall stand at the date of the declaration of dividends.

Sec. 19. Certificates of stock, signed by the president and cashier and registered by the Mechanics Trust Co. of New Jersey, may be issued to shareholders, and the certificate shall state upon the face thereof that the stock is transferable only upon the books of the bank; and when stock is transferred, the certificates thereof shall be returned to the bank, canceled, preserved, and new certificates issued.

Provision received and marked Exhibit P-9.

Plaintiff rests.

DE WITT VAN BUSKIRK, a witness called on behalf of the defendant being duly sworn testified as follows:

Direct examination by Mr. Garven:

I am the President of the Mechanics Trust Company, which institution was the registrar of the stock of the First National
36 Bank of Bayonne up to the time of its failure. We kept a loose leaf registry of the stock. I have all the leaves that refer to the First National Bank stock. The sheets which I have in my hand are the original records showing the transfer of stock of the First National Bank.

Two sheets received in evidence and marked Exhibit D-4.

Cross-examination by Mr. Gibboney:

Of my own knowledge I cannot say whether or not the certificates which I am now shown, Exhibits P-6 and P-7, Numbers 124 and 125 respectively, were ever presented for transfer.

WILLIAM H. VREELAND, a witness called on behalf of the defendant, being duly sworn testified as follows:

Direct examination by Mr. Garven:

I am the husband of the defendant in this action. On September 25, 1913, I owned 125 shares of stock of the First National Bank of Bayonne. I had owned them for some time prior to that. I purchased the last batch some time during 1912. On September 25, 1913, I asked Mr. Carragan when he made out the dividend checks to make out two checks, one on 100 shares and one on 25. He said, "I cannot do it as I have already made out the check for the whole amount 125 shares." I told him I wanted to use the check on the 100 shares to make my wife a present. He said, "If that be true, why not, so that I will remember it on the January dividend, put the certificate in her name." I said, "All right," and he
37 said, "If you bring in the other certificate I will fix it up," referring to certificates to equal the 100 shares. I did take in certificates either on that day or the next and he had new ones made

out and he handed them to me and in doing so he said it was necessary to have them registered, "if you want to give them to your wife." I said I did not intend to give her the certificates, only the dividend on the 100 shares. I said then I would have them endorsed back to me if that was necessary to have it done that way. I proceeded on the first day of October to have them endorsed back to me. Certificates numbered 92, 106 and 110 are the certificates I handed to him at that time.

Certificates marked Exhibits P-6 and P-7 are the certificates which were handed to me made out in the name of Mary A. Vreeland in return for the certificates surrendered by me at that time.

I received the check marked Exhibit P. 5 from the First National Bank. I gave the check to my wife as a present. The first time I presented those certificates to Mrs. Vreeland I asked her to sign her name on the back of those certificates, that I had made a mistake. That was the first of October 1913, the same day I endorsed the check over to her. Prior to that I did not have any conversation with her in reference to the transfer of the stock. It was on October 1st when I showed her those certificates that I told her I had made a mistake and wanted her to endorse those certificates back to me. There has been no other conversation with her in reference to the transfer of the stock from me to her.

By the Court:

I first showed her the certificates on the day on which she endorsed them, October 1st.

38 By Mr. Garven:

Subsequent to October 1st I had a conversation with the receiver in reference to the payment of the assessment on 125 shares of stock owned by me. I signed the paper, Exhibit P-2 also the bond, also Exhibit P. 3 and the bond.

Q. Now then, just prior to the signing of these papers, did you have any conversation with the receiver with reference to the payment of the assessment on the 125 shares of stock?

——.

Q. What conversation did you have?

Mr. Gibboney: I object to that.
The Court: I will admit it.

Plaintiff's counsel asks an exception which is hereby allowed and sealed accordingly.

THOMAS G. HAIGHT, *D. J.*

(Sealed.)

A. I told Mr. Shutts the receiver at that time that I had some property that was free and clear and from which I would pay my assessment on the 125 shares of stock. He asked me what it was worth and I told him about $14,000. He said he would consider the

matter for a day or two or a few days and let me know. A few days later he notified me he would accept it and he notified Mr. Chamberlain the attorney for the receiver at that time to draw up the paper.

At that time I gave a mortgage on my own home which was subsequently foreclosed. As a result of the sale I lost both pieces of property.

The signatures of Mary A. Vreeland upon the stubs Nos. 124 and 125, being the receipts for the two certificates, Exhibits P. 6 and Exhibit P. 7, were signed by me. I don't recall that after
39 October 1st, the date Mrs. Vreeland had signed those certificates, I did do anything, go to Mr. Carragan, say anything to him about those certificates.

Between the date of the issuance of the stock in Mrs. Vreeland's name and October 1st I said to Mr. Carragan that I did not want to transfer the stock to Mrs. Vreeland when he asked me to have them registered. Then he told me that if I did not have them registered the original 125 shares were still mine and at the time of that conversation I had the two certificates in the name of Mrs. Vreeland in my possession in the bank.

After I had Mrs. Vreeland sign the certificates on the back I kept them in my possession. On October 1st I said to Mr. Carragan I had the certificates signed by Mrs. Vreeland over to me. That is the time he said I still owned the 125 shares unless I had them registered at the Mechanics Trust Company which I said I did not want to do. I did not hand them to him. I had them in my possession. On September 25th, I requested Mr. Carragan to have two dividend checks made out in my name, one on 100 shares and one on 25 so that I could make Mrs. Vreeland a present of $250. That was the time Mr. Carragan suggested that I put the stock in the name of Mrs. Vreeland, and that was the day on which I surrendered the three certificates referred to and had the conversation about the transfer and the registering of the new certificates. I had two conversations with Mr. Carragan. When Mr. Carragan stated to me that the stock, 125 shares, was still in my name I did not do anything, simply retained the certificates.

Cross-examination by Mr. Gibboney:

At the time I turned the check over to Mrs. Vreeland I did
40 not inform her that I was giving her the dividends on those 100 shares of stock as a present. I explained to her that the purpose for which I handed her the check was simply as a present. I didn't tell her anything about where it came from nor that she would get the future dividends on the stock. That was originally my intention. When I had the stock transferred to her name I intended that she should have the quarterly dividends on the stock. On October 1st, I did not hand her these certificates at the time she endorsed them. I put the certificates on the table and asked her to endorse them; that I had made a mistake. I said, "Put your name on the back of these as I have made a mistake." That is about all the conversation I had. I was examined some time last spring as a bankrupt. I did not testify on that examination that I asked the president of the bank to make out a check to the order of my wife

for a dividend which was due on the first of October. I couldn't have done so because I didn't do it.

By the Court:

Isn't that exactly what you testified to here that you first asked Mr. Carragan to make out the check to Mrs. Vreeland and he told you he couldn't do it because the check had already been made out and that thereafter if you wanted the dividends payable to her that you would have to have the stock in her name?

The Witness: No, sir, not exactly that. I asked him to make out two checks one on the 100 shares and one on 25 to myself.

By Mr. Gibboney:

Q. Well, now, in order to save any question Mr. Vreeland
41 I will ask you if you weren't asked this question on this bankruptcy proceeding March 15, 1916, "And what was the purpose of that transfer?" and did you not make the following reply: "A. I can explain that. About that date I asked the president of the bank to make out a check to the order of my wife for a dividend which was due the first of October for 100 shares. I wanted to make her a present in cash. He said "cannot do it, the check has already been made out for the full amount" which I said I was sorry, and he said "If you want to do that why not transfer, put those certificates in her name and you can give it to her." I said, "All right" which was done. After that I realized that my securities were out of my hands and so stated, and on the first of the month, instead of doing—giving her this check for the dividend for 100 shares, I made her a present of the entire check including my own as well and had her assign those to me. Mr. Carragan said that they had never been transferred legally so that it was not necessary to do anything more about it." Were you asked that question and did you make that reply?

A. That's about—I should say that was about what I replied.

Q. Then as a matter of fact Mr. Vreeland you did ask Mr. Carragan to make out a check to your wife for the dividend on 100 shares, didn't you?

A. To make out two checks, one on 100 and one on 25. To the best of my knowledge and belief to-day I asked him exactly for two checks to my order.

I was one of the Vice-Presidents of the First National Bank of Bayonne. I was a director of the bank during all of its existence as a National Bank. I was not familiar with the following provision of the by-laws:

42 "Section 18. Transfers of stock shall not be suspended preparatory to the declaration of dividends and unless an agreement to the contrary shall be expressed in the assignments, dividends shall be paid to the shareholders in whose name the stock shall stand on the date of the declaration of the dividends."

I am not positive that I attended the meeting at which the dividend was declared in the early part of September. The records will show.

After the first of October I kept the certificates in my possession in my home and did not show them to my wife after that date, or to any one else to my knowledge.

MARY A. VREELAND, a witness called on behalf of the defendant being duly sworn testified as follows:

I am the defendant in this action. I don't know whether the signatures on the stubs of the certificates numbered 124 and 125 are mine or not. They look like it. I don't acknowledge it as my signature; that's not my writing, if that's what you mean. The signature on No. 125 is not my signature. The signature on Exhibit P-6 is mine, likewise Exhibit P-7. I first saw these certificates the day Mr. Vreeland brought them to me to have them signed on the first day of October, 1913. Mr. Vreeland came to me and asked me if I would sign these papers. I said, "What are they?" He said, "Some bank stock in which I have made a mistake. I said, "Yes"
and I immediately signed them, that is all. That was the
43 first time I had heard of having First National Bank stock issued in my name with the exception of 15 shares.

At that time I was the owner of 15 shares which I had had since 1910. On December 6, 1913, I had physically in my possession just one certificate for 15 shares. On October 1st and prior thereto I did not know anything whatever in reference to the transfer of the stock belonging to Mr. Vreeland to me. I did not authorize, direct or suggest to Mr. Vreeland or any one else to purchase for me 100 shares of stock of the First National Bank on September 25, 1913.

Cross-examination by Mr. Gibboney:

I kept the 15 shares of stock in my home in my dresser drawer. Mr. Vreeland looked after a great deal of my private business matters. At the time this dividend check was delivered to me Mr. Vreeland did not tell me he was making me a present of the dividend from the First National Bank, never said a word about it at all, not one word. I suppose I opened that account in the First National Bank of Bayonne September 29, 1913 because I wanted to, I don't know what else.

Redirect examination by Mr. Garven:

I subsequently paid the assessment on the 15 shares of stock that I held.

By the Court:

Mr. Vreeland told me that he put some bank stock in my name and had made a mistake and wanted me to assign it in blank. He merely said "May, will you sign these papers for me?" I said, "What are they?" He said, "They are some bank stock, I have made a mistake." I didn't know that the certificates were in
44 my name; I didn't know anything about them; didn't think anything about them.

Q. Well, what made you think you were signing an assignment of stock if you didn't know what the stock was?

A. Well, I knew that Mr. Vreeland would not ask me to do anything I should not do; he never has. He just said "some bank stock." He did not tell me what bank; that was all he said, just what I am telling you now. He did not tell me it was in my name, I don't think that he said anything more than that. He just said, "May, will you sign these papers? I said, "what are they?" He said, "It is some bank stock and I have made a mistake." He didn't tell me in what respect he had made a mistake. I didn't feel that he should explain it. He just said he had made a mistake and asked me if I would sign it. That was all.

By Mr. Gibboney:

Q. Did you say anything to any officer of the First National Bank of Bayonne with reference to this stock after October 1, 1913?
A. Which stock, the 100 shares?
Q. The 100 shares.
A. I never spoke to anybody about it. I had no interest in it, why should I?

GEORGE CARRAGAN, a witness called on behalf of the defendant being duly sworn testified as follows:

Direct examination by Mr. Garven:

I was president of the First National Bank of Bayonne in October 1913. I recall the specific time and instance in connection with the cancellation of certificates Nos. 92, 106 and 110. The latter part of September, I cannot tell just the date, Mr. Vreeland came into the bank and said "Mr. Carragan, I wish you would draw the dividend check for 100 shares of that stock to my wife and draw the other check for the balance of 25 shares to me." I said, "I cannot do that for the very reason the checks are already made out." We make the checks out usually in advance. The dividends had been ordered on the 1st day of September and he said, "I want to give my wife the dividend coming from that stock." I said, "Well, if you want to do that and do that in the future the only way for you to do is to get your stock and have it changed; put in 100 shares in your wife's name 25 shares in your own name." He said, "Well, I can do that." I said, "Well, all right bring your stock in." He brought in a few certificates, I think 3 and I took and cancelled those certificates and gave him the certificates for the two others, one for 100 shares made to his wife and 25 shares to himself. Exhibits P-6 and P-7 are the two certificates I issued at that time in the name of Mrs. Vreeland for 100 shares of the stock which was formerly in the name of William H. Vreeland.
Q. Now go on and tell us what else transpired?
A. The next day or a day or so afterward——

Mr. Gibboney: I object to any other conversation after the stock was issued.
The Court: I will permit it.

Plaintiff's counsel asks an exception which is hereby allowed and sealed accordingly.

THOMAS G. HAIGHT, *D. J.*

(Sealed.)

46 A. The next day or a day or two afterwards he come in and he said "George, I think I made a mistake."

Mr. Gibboney: Just a moment; this was after the stock was issued, Mr. Carragan?

The Witness: After the stock was issued.

A. "I think I made a mistake in having that stock changed. I am getting a good collateral out of my hands. If I want to get any money from any other bank I want to use that as collateral." "Well," I said, "I have made the certificate out in that way. You get your wife to endorse it. It will have to go down and be registered at the Mechanics Trust Company. It is no good as it is, it will have to be registered", and I said, "It will take two registrations now in order to get that through, first we will have to register them into your wife's name and then back into your own name." "Well, he said, "I will bring it in and have it changed that way."

After that conversation I told him it was no good until it was registered. I don't think I said anything about any stock standing in his name. I don't remember. I told him that the present stock that was issued had not been registered, consequently it was not good. I said it was not good, that it would have to be registered before it was any good if he wanted it back into his name; I says at the Mechanics Trust Company it still stands in your name.

By the Court:

I knew that I couldn't raise any money on a certificate that I had already cancelled. The fact that it stood in his name down at the Mechanics Trust Company did not signify anything; simply
47 made it worthless. What I mean by that is that unless he could have had those certificates registered and then had new stock issued and cancelled these two and had another certificate issued for himself and had that certificate registered it would not have been good.

Cross-examination by Mr. Gibboney:

What I mean was this, in my opinion I didn't consider it good collateral unless he first had it registered at the Mechanics Trust Company into Mrs. Vreeland's name, and then registered again into his name.

By the Court:

I cannot remember in which clerk's handwriting the account of Mary A. Vreeland on page 57 of the stock ledger is. In making the entries in this book I was not concerned with whether or not the certificate had been presented to the Mechanics Trust Company for registration. I made the entries from our stock certificate book; that

is what I went by. In payment of dividends I went by the stock ledger, not by what the Mechanics Trust Company registered or did not register. That had nothing to do with it.

Redirect examination by Mr. Garven:

My attention is called to the date September 25, 1913, the resolution introduced on September 2, declaring a dividend to stockholders of record September 27th, and I state that the dividend check was made out in the name of William H. Vreeland because it was made out in advance. It was made out previous to September 27th.

Papers marked Exhibits D-2 and D-3 for identification received in evidence.

Defendant rests.

48 Mr. Garven: I move for a direction of verdict for the defendant on the ground (1) that plaintiff has failed to show that defendant was a stockholder of record for 115 shares of stock. (2) That the plaintiff has failed to show that certificates of stock to the number of 115 shares were duly issued and delivered and registered on or prior to December the 6, 1913, in the name of the defendant. (3) That the stock certificates which had been issued in the name of the defendant were assigned by her on October 1, 1913. (4) That the plaintiff is estopped by reason of his admissions and an agreement made with William H. Vreeland prior to the time of filing complaint in this case. (5) That the plaintiff is estopped by reason of the bringing of foreclosure proceedings against William H. Vreeland and the acceptance by him of moneys received from the sale under that foreclosure. (6) That the stock in the name of Mrs. Vreeland, the defendant, was not transferred on the books of the Association in such manner as was prescribed in the By Laws of the Association. (7) That the evidence shows conclusively that Mrs. Vreeland paid the assessment on the 15 shares of stock owned by her and that the balance of 100 shares was and is owned by William H. Vreeland.

Mr. Gibboney: I move for a direction of verdict if your Honor please, on the ground that the defendant was the stockholder of record on the books of the Bank at the time of the levying of the assessment by the Comptroller, and that it appears that she knew she was a stockholder in said bank and took no steps whatever to have the stock which was issued in her name transferred

49 out of her name on the books of the bank.

It is conceded that there is no disputed question of fact.

The Court: Gentlemen of the Jury: Counsel have agreed that there is no question of fact in the case which should be submitted to the Jury as distinguished from the Court, that is to say that the facts are not in dispute and it is purely and simply a question of law, under the facts, whether or not the plaintiff is entitled to recover or the defendant is entitled to recover and hence that there should be a direction in favor of one or the other by the Court, the plaintiff contending of course that there should be a direction for him, and the

defendant contending that there should be direction for her. I will bring you back at some later time and go through the formality of a direction.

The Court: Counsel for both parties agree that there is no question in this case to be submitted to the jury. The only question is one of law, whether or not, under the uncontroverted facts, the defendant is liable for the assessment provided for in Sec. 5151 of the Revised Statutes. She appears, on the books of the bank, as a stockholder to the extent of 115 shares. Admittedly she was the owner of 15 of such shares when the bank was closed, and was liable, as to them, for the assessment which was levied by the Comptroller. That assessment, however, she has paid. Subject to a few exceptions, it is the general rule that one in whose name stock stands on the books of a National Banking Association remains liable for an assessment, so long as the stock is allowed to stand in his name on the
50 books, and, consequently, that although the registered owner may have transferred them to another person, unless it has been also accompanied by a transfer on the books of registry of the Association, such re-registered owner remains liable. Matteson vs. Dent, 176 U. S. 521, 530, and cases there cited; Finn vs. Brown, 142 U. S. 56, 57. Unquestionably, therefore, if nothing else appeared, the defendant would be liable. But it is equally well settled (and this is one of the exceptions before noted) that if the stock is placed in one's name without his knowledge or consent, and he is not informed of what was done, nothing more appearing, such apparent legal holder of the shares would not be liable. Keyser vs. Hitz, 133 U. S. 138, 149; Finn vs. Brown, supra. This latter rule, however, is subject to the important qualification that if the person to whom the stock has been transferred shall, in any manner approve, ratify or acquiesce in such transfer, or accept any of the benefits arising from the ownership of the stock, he will be liable to be treated as a shareholder with the responsibilities which the law casts upon one occupying that relation. (See cases last cited). From the evidence in this case, it is clear that the defendant, Mrs. Vreeland, had no knowledge whatsoever that the stock was to be placed in her name, and that it was done without her consent. The first intimation she had of it was shortly afterwards, when she was asked by her husband to sign the blank powers of attorney, printed on the back of the certificates. The circumstances under which this request was made, as testified to by both the defendant and her husband, are as follows: Mr. Vreeland said to her—"May, will you sign these papers?" She then asked what they were, to which he replied—"It is some bank stock and I have made a mistake."
51 He did not explain in what respect he had made a mistake, nor tell her to whom nor by what bank the stock had been issued, or anything about it. On the same day Mr. Vreeland received a check from the bank for the dividend on 125 shares. This check was made out to his order and endorsed by him, and subsequently endorsed by the defendant. No dividends were received by her directly, and no benefits accrued to her as a result of the placing of the stock in her name. All of the subsequent actions of the parties, both before and after the Receiver was appointed, tend to show that neither she nor her husband, nor, for that matter, the first re-

ceiver considered that she was a stockholder to any greater extent than the 15 shares of which she was admittedly the owner. The question, therefore, is, whether the above recited facts establish on her part such a ratification of or acquiescence in the placing of the stock in her name as would make her liable as a stockholder for an assessment, under the rules before mentioned. In Binn vs. Brown, Mr. Justice Blatchford said, p. 70:

"No general rule can be laid down as to what will constitute, in any particular case, an acceptance of the transfer of stock or the equivalent thereof, in a case where the transferee is in fact ignorant of the fact of transfer; but each case must be decided on its own facts."

My attention has not been directed to any case where a state of facts such as are shown to exist in this case, has been held to constitute a ratification or acquiescence on the part of the transferee. In Keyser v. Hitz the transferee had received several dividend checks and had endorsed them, and this fact was held to constitute her a shareholder, for the purpose of fixing liability for an assess-
52 ment. She had accepted the benefits arising from the ownership of the stock, and the liability in that case can properly be rested on that ground. See in this connection National Bank vs. Case, 99 U. S. 628, 632, and Pauly vs. State Loan and Trust Company, 165 U. S. 606, 612. In Finn vs. Brown, the person in whose name the shares had been placed was a director and acting cashier of the bank, and it would have been unlawful for him to have occupied either of those positions had he not been a stockholder. It was also one of his duties as cashier to keep, at all times, a full and correct list of the names and residences of all shareholders and the number of shares held by them respectively. It was held that there was a conclusive presumption that he kept such a list and was cognizant of its contents, and consequently that he must be conclusively presumed to have known for a long period of time that he was a shareholder. He was also required to take an oath before he became a director that he was the owner of 10 shares of stock. It was said in that case, p. 71:

"The statutes of the United States are explicit as to the necessary ownership of stock in a national bank by a director thereof, and as to his taking an oath to that effect, and as to the keeping by the cashier of a correct list of the shareholders and of the number of shares each of them holds; and it cannot be held, with any safety to the interests of the public and of those who deal with national banks, that a director, who also is vice-president and acts as cashier, can shield himself from liability by alleging ignorance of what appears by the books of which he has charge."

It is thus apparent that he had not only acquiesced in the
53 unauthorized act, by his failure, for a long time after he had knowledge that the stock had been transferred to him, to repudiate it, but was estopped to deny that he was a stockholder, when the law required that he be one to occupy in the bank the position which he did.

Manifestly very different situations were presented in those cases than in the case at bar. In Kenyon vs. Fowler, 155 Fed. 107, which

was affirmed by the Supreme Court in 215 U. S. 593, the defenda
knew that stock had been placed in his name for the ostensible pu
pose of holding him out as a stockholder, rather than the real own
of the stock. He acquiesced in this procedure, and neither did n
attempted to do anything whatsoever to disaffirm or repudiate t
unauthorized act of placing the stock in his name. It is true that
signed a blank power of attorney to transfer the stock, but he did th
at the same time that he was advised that the stock had been plac
in his name, and not for the purpose of disaffirming the unautho
ized act or with the intention that the stock should be immediate
transferred from his name, but merely to protect and accommoda
the real owner. That case is, therefore, also readily distinguishab
from the present case. The facts in this case more nearly resemb
those which were before the Court of Appeals of New York in Glen
vs. Garth, 133 N. Y. 459, than any other case to which my attentio
has been called. It was there said by Judge Finch (p. 464)—r
ferring to what the defendants had done to correct the mistake whi
had been made in placing the stock in their name, that is to say, t
endorsement of a power of attorney upon the certificate:

"The method of an immediate sale involved in the same way
transfer of the same formal legal title, and when done, not
54 a confirmation of ownership, but as a method of changing t
registry of the company with a view of correcting the fal
appearance of ownership, I can see no reason for deeming it a co
firmation or ratification. * * * It (a ratification) implies a co
scious and intended approval of the act done. It rests upon t
actual and existing purpose to make such approval. Hence, t
courts say, that it must occur with full knowledge of all the facts."

Again referring to the estoppel feature, he said (p. 465):

"That question is not reached, because before it can be reache
there must be shown to exist some act of the party, done by him
with his assent, creating the alleged apparent relation. That fa
must be established before any question of estoppel can arise. If t
act done, the false appearance created, is the act, not of the part
but of some third person, such party is in no manner bound
affected by it unless he either originally authorized it or subsequentl
ratified it."

And again, on page 467, he said:

"Where the shareholder consciously accepts that relation, he ough
to bear its burdens as well as enjoy its benefits, and it is easy to impl
a promise to perform that duty. But where he does not accept th
relation, where it was put upon him by another without authorit
and against his will, where instead of accepting its benefits, he r
pudiates them at serious loss, where his mind and that of the com
pany never met in any contractual relation, where it was not h
duty to pay, and he explicitly refused to take what was offered, a
foundation for an implied promise is gone. The facts do not admit
it for the law does not raise a fiction to accomplish a wron
55 And thus again we come to the proposition that the real trut
must be ascertained, and when ascertained must contro
And that real truth is that the defendants repudiated and did n
ratify the unauthorized act of McKim. The whole force of a ratifi
tion lies in conscious and intended assent with full knowledge of th

facts. If there is no such intent and no such violation, but a contrary intent and an opposite purpose, there is no ratification. The absence of any such intent and the presence of a different one is clearly disclosed by the facts."

Nor is this case, although there are distinguishing features, wholly unlike Anderson vs. The Philadelphia Warehouse Company, 111 U. S. 479. Even if the defendant is estopped to deny that she knew that the stock had been placed in her name, I cannot conceive that, under the circumstances before detailed, her act of signing the power of attorney was an acquiescence or ratification—a "conscious and intended approval"—of the unauthorized act of placing the stock in her name, but was, as in Glenn vs. Garth, for the purpose of correcting a mistake, and was the only immediately available method open to her of doing so. Her husband told her that a mistake had been made. So far as she was concerned the only way of correcting the mistake was to endorse the powers of attorney. She was not thus ratifying his unauthorized act, but was trying to undo it. She was not, as in Kenyon vs. Fowler, told that stock had been placed in her name for the accommodation of someone else, and thereby in effect informed that she was to be held out to the world for an indefinite time as a stockholder; but she was merely asked to correct a mistake. It is urged that it was her duty to have gone to the bank and made certain that her name was removed from its books
56 as a stockholder. But it seems to me that the important question to be primarily solved is not what she should have done, but whether what she did do can be considered a ratification of or acquiescence in the unauthorized act. It is material to inquire what she should have done, only if ratification is first found. In addition I should hesitate long before holding that she was estopped to deny that she did not know that stock was standing in her name. If she is not so estopped, clearly there could be no ratification, because there would be wanting the essential element of knowledge. She was a woman unaccustomed to business, who trusted her husband, and, as said by Mr. Justice Finch, I do not think that the law should raise a fiction to accomplish a wrong.

It is sought to hold this defendant on what may be properly considered a bare technicality—that her mere endorsing of a power of attorney on two certificates simultaneously with the first presentment of the certificates to her, and without any adequate knowledge on her part as to what the papers were that she was signing or by what bank the stock had been issued, constituted a ratification on her part of the unauthorized act, even though the only information she had was that a mistake had been made and that her act was the undoing of the mistake—and this notwithstanding that the first Receiver recognized the husband as the owner of these 100 shares, and procured from him what was then considered adequate security for the payment of the assessment thereon, and realized upon such security, upon foreclosure. To hold her liable under these circumstances would be to go further I think, than any case has yet gone, and to substitute for acquiescence in fact, nothing more than a forced legal fiction and presumption.

57 Although the burden was upon the defendant to show that she was not in fact the owner of the stock, (Finn v. Brown,

supra, 67) I think that she has borne the burden by proving that the placing of the stock in her name in the first instance was unauthorized—without her knowledge and consent—and that she did not thereafter acquiesce in this act or in any way ratify it. I think that the broad language found in the opinion in Scott vs. Deweese, 181 U. S. 207, to which counsel for the plaintiff have called my attention, must be considered in the light of the facts of that case and not as applicable to all situations. If it were to be held applicable to all cases, it would clearly be opposed to Keyser v. Hitz and Finn vs. Brown. I am constrained to hold, therefore, that the defendant is not liable and that a verdict should be directed in her favor.

This conclusion makes it unnecessary for me to consider the other questions raised by defendant as to whether the fact that the stock was not registered with the registry agent of the bank, namely, the Mechanics Trust Company, relieves her from liability; or whether the fact that the Receiver originally recognized Mr. Vreeland as the owner of this stock and accepted from him security for the payment of the assessment thereon, and realized upon that security, and has made no effort to return it, has the same effect. I am frank to admit, however, that I do not think that either of these facts would bar the plaintiff's action. As to the latter question, Pauly vs. State Loan and Trust Company, 165 U.S., at 619, seems to be authority for the proposition that both the real owner and the registered owner may be held, although of course satisfaction can be received from but one.

58 I will therefore, direct a verdict for the defendant.

Gentlemen of the Jury: For the reasons which I have indicated, it becomes my duty to direct you to return a verdict in favor of the defendant, and against the plaintiff.

Plaintiff's counsel asks an exception to the refusal of the Court to direct a verdict in favor of the plaintiff, and to the direction of a verdict in favor of the defendant, which exceptions are hereby allowed and sealed accordingly.

THOMAS G. HAIGHT, *D. J.*
(Sealed.)

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

It is hereby stipulated that the foregoing is a true transcript of the record of the said District Court in the above entitled action, in so far as the same is necessary for the purposes of appeal, and

59 we hereby consent to the filing of the same as and for the Bill of Exceptions herein, and consent to the entry of an order authorizing the filing of the said Bill of Exceptions.

Dated, January 31st, 1917.

STUART G. GIBBONEY,
Solicitor for Plaintiff.
PIERRE P. GARVEN,
Solicitor for Defendant.

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND, Defendant.

Upon the foregoing stipulation the foregoing Bill of Exceptions is hereby settled and ordered on file as the original Bill of Exceptions herein.

Dated, February 10th, 1917.

THOMAS G. HAIGHT,
District Judge.

EXHIBIT 1.

Mary A. Vreeland.

When issued.	Nos. of Ctfe. Old.	Nos. of Ctfe. New.	From whom received.	Page.	No. of shares.	Balance.	When canceled.	Nos. of Ctfe. Old.	Nos. of Ctfe. New.	To whom transferred.	Page.	No. of shares.
1910.												
May 5.	62	76	Max Maraller.....	..	15	...						
1913.												
Sept. 25.	106	124										
	110	125	Wm. H. Vreeland...	9	100	115						
	92											

Wm. H. Vreeland,
E. 33d St.

When issued.	Nos. of Ctfe. Old.	Nos. of Ctfe. New.	From whom received.	Page.	No. of shares.	Balance.	When canceled.	Nos. of Ctfe. Old.	Nos. of Ctfe. New.	To whom transferred.	Page.	No. of shares.
1907.							1913.					
May 17.	...	9	.....	..	20	...						
1910.												
May 5.	62	77	Max Moraller.....	..	5	...	Sept. 25.	106	124			
June 1.	73	92	George Carragan...	43	50	...		110	125	Mary A. Vreeland		
Apr. 1/12.	67	106	" " "		42	117		92	...	.....	57	100
1912.												
Oct. 21.	48	110	F. G. Perkins.....	45	8	125						
	49											
	50											

61 EXHIBIT 2.

Bond dated June 13, 1914, made by William H. Vreeland to Frank B. Shutts, Receiver of the First National Bank of Bayonne, New Jersey, as such receiver in the penal sum of $25,000 condition- upon the payment of $12,500 on September 14, 1914. The bond contains the following parenthetical recital:

"(This bond is given to secure the payment of an assessment upon one hundred and twenty-five shares of the capital stock of the First National Bank of the City of Bayonne, a National Banking Association formed under the National Bank Act, owned by William H. Vreeland.)"

Mortgage dated June 13, 1914, to secure the above bond, made by William H. Vreeland and Mary A. Vreeland, his wife, to Frank B. Shutts, Receiver of the First National Bank of Bayonne, as such Receiver, covering two parcels of real estate in the City of Bayonne.

Recorded in Hudson County Register's Office, June 20, 1914. Book 828 of Mortgages, page 110, etc.

EXHIBIT 3.

Bond, dated June 13, 1914, made by Mary A. Vreeland, wife of William H. Vreeland, and the said William H. Vreeland, to Frank B. Shutts, Receiver of the First National Bank of Bayonne, New Jersey, as such receiver in the penal sum of $3,000, conditioned upon the payment of $1,500, on September 14, 1914.

The bond contains the following parenthetical recital:

62 "(This bond is given to secure the payment of an assessment upon fifteen shares of the capital stock of the First National Bank of the City of Bayonne, a National Banking Association formed under the National Bank Act, owned by Mary A. Vreeland, wife of William H. Vreeland.)"

Mortgage, dated June 13, 1914, to secure the above bond, made by Mary A. Vreeland, wife of William H. Vreeland, and the said William H. Vreeland, to Frank B. Shutts, Receiver of the First National Bank of Bayonne, as such Receiver, covering one parcel of real estate in the City of Bayonne.

Recorded in Hudson County Register's Office June 20, 1914, Book 828 of Mortgages, page 113, etc.

EXHIBIT 4.

Stock certificate book of the First National Bank of Bayonne. Certificates referred to are as follows:

No. 29. Issued to William H. Vreeland for 50 shares of the capital stock of the First National Bank of Bayonne, N. J., of the par value of $100, dated June 1, 1910, signed by F. G. Perkins, Cashier, George Carragan, President.

Registered June 1, 1910 in Mechanics Trust Co., by F. C. Earle, Secretary.

Certificate of transfer to Mary A. Vreeland dated September 2, 1913, signed by Wm. H. Vreeland, in the presence of George Carragan. Certificate marked across face "Cancelled" and pasted to stub in book No. 92.

No. 106. Issued to William H. Vreeland for 42 shares of
63 the capital stock of the First National Bank of Bayonne, N. J., of the par value of $100, dated April 1, 1912, signed by F. G. Perkins, Cashier, George Carragan, President.

Registered April 1, 1912 in Mechanics Trust Co., by F. C. Earle, Secretary.

Certificate of Transfer to Mary A. Vreeland, dated June 9, 1913, signed by Wm. H. Vreeland, in the presence of George Carragan. Certificate marked across face "Cancelled" and pasted to stub in book No. 106.

No. 110. Issued to William H. Vreeland for 8 shares of the capital stock of the First National Bank of Bayonne, N. J., of the par value of $100, dated October 21, 1912, signed by L. B. Bragdon, Cashier, George Carragan, President.

Registered October 21, 1912, in Mechanics Trust Co., by F. C. Earle, Secretary.

Certificate of transfer to Mary A. Vreeland dated June 9, 1913, signed by Wm. H. Vreeland, in the presence of George Carragan. Certificate marked across face "Cancelled" and pasted to stub in book No. 110.

Stub.

No. 124.

50 shares.

Dated Sept. 25, 1913.
issued to
Mary A. Vreeland of Bayonne, N. J.
Received the above described certificate
September 25, 1913.

MARY A. VREELAND.

Stub.

No. 125.

50 shares.

Dated Sept. 25, 1913.
issued to
Mary A. Vreeland of Bayonne, N. J.
Received the above described certificate
Sept. 25, 1913.

MARY A. VREELAND.

64 EXHIBIT 5.

BAYONNE, N. J., Oct. 1, 1913.

First National Bank of Bayonne, N. J.

Pay to the order of William H. Vreeland $312.50 Three hundred twelve and 50/100 Dollars.
No. 14. L. B. BRAGDON, *Cashier.* GEO. CARRAGAN, *President.*

Across face: "Dividend check".
Endorsed: Wm. H. Vreeland, Mary A. Vreeland.

EXHIBIT 6.

Organized under laws of the United States.

The First National Bank of Bayonne, N. J.

No. 124. Capital Stock $100,000.

This certifies that Mary A. Vreeland is the registered holder of Fifty shares full paid of the par value of One hundred dollars each of the capital stock of The First National Bank of Bayonne, N. J., transferrable only on the books of said bank by the said holder in person or by attorney upon surrender of this certificate properly endorsed.

This certificate is not valid until countersigned by the registrar.

Witness the signature of the President and of the Cashier and the seal of the said bank this 25th day of September, 1913.

GEO. CARRAGAN, *President.*

L. B. BRAGDON, *Cashier.*

[On margin:] Registered The Mechanics Trust Company by ——— ———, Secretary.

Form of transfer on back signed in blank October 1, 1913, Mary A. Vreeland in the presence of George Carragan.

65 EXHIBIT 7.

Organized under laws of the United States.

The First National Bank of Bayonne, N. J.

No. 125. Capital Stock $100,000.

This certifies that Mary A. Vreeland is the registered holder of Fifty shares full paid of the par value of One hundred dollars each of the capital stock of The First National Bank of Bayonne, N. J. transferrable only on the books of said bank by the said holder in person or by attorney upon surrender of this certificate properly endorsed.

This certificate is not valid until countersigned by the registrar.

Witness the signature of the President and of the Cashier and the seal of the said bank this 25th day of September, 1913.

GEO. CARRAGAN,
President.

L. B. BRAGDON,
Cashier.

[On margin:] Registered The Mechanics Trust Company by —— ——, Secretary.

Form of transfer on back signed in blank October 1, 1913, Mary A. Vreeland in the presence of George Carragan.

66 EXHIBIT 8.

No. 8454.

Assessment upon Shareholders.

Treasury Department.

Office of the Comptroller of the Currency.

WASHINGTON, D. C., May 13, 1914.

In the Matter of the First National Bank of Bayonne, New Jersey.

To All Whom It May Concern:

Whereas, Upon a proper accounting by the Receiver heretofore appointed to collect the assets of "The First National Bank of Bayonne, New Jersey," and upon a valuation of the uncollected assets remaining in his hands, it appears to my satisfaction that in order to pay the debts of such association it is necessary to enforce the individual liability of the stockholders therefor to the extent hereinafter

nentioned, as prescribed by sections 5151 and 5234 of the Revised Statutes of the United States.

Now, therefore, by virtue of the authority vested in me by law, I lo hereby make an assessment and requisition upon the shareholders of the said "The First National Bank of Bayonne, New Jersey," for One hundred Thousand Dollars, to be paid by them ratably, 57 on or before the Thirteenth Day of June, 1914; and I hereby make demand upon each and every one of them for One Hundred Dollars upon each and every share of the capital stock of said association held or owned by them respectively at the time of its failure, and I hereby direct Frank B. Shutts, the Receiver heretofore appointed, to take all necessary proceedings, by suit or otherwise, to enforce to that extent the said individual liability of the said shareholders.

In witness whereof, I have hereunto set my hand and caused my seal of office to be affixed to these presents at the City of Washington, in the District of Columbia, this thirteenth day of May, A. D., 1914.

[SEAL.] JOHN SKELTON WILLIAMS,
Comptroller of the Currency.

(See inside.)

Office of the Receiver of The First National Bank, Bayonne, New Jersey.

BAYONNE, N. J., May 13, 1914.

You will please take notice, that the Comptroller of the Currency has levied an assessment upon the stockholders of The First National Bank of Bayonne, New Jersey, of One Hundred Dollars ($100.00) a share, payable at the office of the Receiver, on or before June 13, 1914. The Receiver is, however, authorized by the Comptroller to grant an extension, without interest, to shareholders who pay 25 per cent. of the assessment on or before that date, and who will give a written obligation, satisfactorily guaranteed, to 58 pay 25 per cent. additional on or before July 13, 1914; 25 per cent. on or before August 13, 1914; and the remaining 25 per cent. on or before September 13, 1914.

You are therefore requested to pay the assessment on — Shares of Stock standing in your name, in accordance with the foregoing order and this notice, or suit will be commenced to enforce payment.

RECEIVER OF THE FIRST NATIONAL BANK OF BAYONNE, N. J.

To: —— ——.

Defendant's Exhibits.

EXHIBIT 1 FOR IDENTIFICATION.

Stipulation of discontinuance in action of Williams as Receiver against Mary A. Vreeland and William H. Vreeland. Not offered.

69 EXHIBIT 2.

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

MARY A. VREELAND and WILLIAM H. VREELAND, Defendants.

The plaintiff above named by Barber, Watson & Gibboney, his attorneys, complaining of the above named defendants, respectfully shows and alleges, upon information and belief:

First. That The First National Bank of Bayonne was duly converted from a state bank, and duly organized under the provisions of the Banking Laws of the United States as a national banking association on the 5th day of December, 1906, with a capital stock of One hundred thousand dollars ($100,000.) consisting of one thousand (1,000) shares of stock of the par value of one hundred dollars ($100) per share. That immediately thereafter, and on the 5th day of December, 1906, said The First National Bank of Bayonne commenced business as a national banking association in the City of Bayonne, County of Hudson and State of New Jersey.

70 Second. That the said The First National Bank of Bayonne continued to do such banking business in the City of Bayonne, County of Hudson, State of New Jersey until the 6th day of December, 1913, when the doors of said banking association were closed by order of the Comptroller of the Currency of the United States; and said Comptroller having become satisfied that the said The First National Bank of Bayonne was insolvent, under and pursuant to the provisions of Section 1 of an Act of Congress, entitled "An Act authorizing the appointment of receivers of national banks, and for other purposes," approved June 30, 1876, otherwise known as Section 183 of the National Bank Act, duly appointed Charles H. Chapman receiver of said bank upon the 6th day of December, 1913; and that thereafter, the said Charles H. Chapman resigned as such receiver, to take effect on the 7th day of March, 1914, and thereupon, and on said 7th day of March, 1914, said Comptroller duly appointed Frank B. Shutts receiver of said bank; and thereafter said Frank B. Shutts resigned as said receiver, to take effect on the 19th day of June, 1914; and thereupon, and on said 19th day of June, 1914, said Comptroller duly appointed the plaintiff herein receiver of said bank.

Third. That the plaintiff thereafter, and on the 19th day of June, 1914, duly qualified as such receiver, and ever since has been, and now is, the duly appointed and qualified receiver of said The First National Bank of Bayonne.

Fourth. That the defendants above named are citizens of the County of Hudson, State of New Jersey, domiciled within the District of New Jersey.

71 Fifth. That on the said 6th day of December, 1913, the defendant, Mary A. Vreeland, was the owner of fifteen (15) shares of the capital stock of said banking association, certificates for which had been duly issued and delivered to her prior to the said 6th day of December, 1913, and had been, and were on that day duly registered in her name. That the said defendant is the owner and holder of said fifteen (15) shares of the capital stock of said The First National Bank of Bayonne.

Sixth. That on the 13th day of May, 1914, the said Comptroller of the Currency of the United States having become satisfied that in order to pay the debts of said The First National Bank of Bayonne, it was necessary to enforce the individual liability of stockholders thereof to the extent of one hundred (100) per cent. as prescribed by sections 5151 and 5234 of the Revised Statutes of the United Staes, otherwise known as sections 48 and 178 of the National Bank Act, made an assessment and requisition upon the shareholders of said The First National Bank of Bayonne for One hundred thousand dollars ($100,000), to be paid by them ratably on or before the 13th day of June, 1914, and demanded from each and every one of the shareholders of the said The First National Bank of Bayonne payment of One hundred dollars ($100) upon each and every share of the capital stock of said banking association held or owned by them respectively at the time of its failure, to wit, December 6th, 1913; and said Comptroller of the Currency of the United States directed the Receiver of said banking association, as such receiver, to take all necessary proceedings by suit or otherwise to enforce to that extent the individual liability of the shareholders of the said The First National Bank of Bayonne.

72 Seventh. That thereafter the Receiver of the said banking association duly demanded of the defendant, Mary A. Vreeland, the payment of One hundred dollars ($100) per share on each of the shares of stock owned by the said defendant on the 6th day of December, 1913.

Eighth. That thereafter and on the 13th day of June, 1914, the defendant, Mary A. Vreeland, for the purpose of securing the payment to the then receiver of the First National Bank of Bayonne, or his successors in office, of the sum of Fifteen hundred dollars ($1,500) due by virtue of said requisition and assessment upon the capital stock owned by the said defendant, duly executed, together with William H. Vreeland, jointly, under their hands and seals and delivered to the then receiver, as aforesaid, their certain bond in the penal sum of Three thousand dollars ($3,000), lawful money of the United States of America, to be paid to the said receiver or his successors in office or assigns, with the condition thereunder written, that if the said Mary A. Vreeland or William H. Vreeland, or their heirs, executors or administrators should well and truly pay or cause to be paid unto the then receiver of the said banking association, his successors in office or assigns, the just and full sum of Fifteen hundred dollars ($1,500) lawful money of the United States of America, on the 14th day of September, 1914, then the said obligation should be void; and further recited that the said bond is given to secure the

payment of an assessment upon fifteen (15) shares of the capital stock of The First National Bank of Bayonne, a national banking association formed under the National Bank Act, owned by Mary A. Vreeland, wife of William H. Vreeland.

73 Ninth. That as collateral security for the payment of said indebtedness, as above set forth, the defendants herein duly executed under their hands and seals, a mortgage bearing date on that day, and duly delivered the same to the then receiver of the said banking association, wherein and whereby the said defendants did grant, bargain, sell, alien, release, convey and confirm unto the then receiver of the said banking association, the following parcel of real estate situate in the City of Bayonne, County of Hudson and State of New Jersey, bounded and described as follows:

Beginning at a point on the Southwesterly side of East Twenty-fourth Street (formerly Twenty-ninth Street) distant thereon one hundred and sixty-one and fifty one-hundredths (161.50) feet Northwesterly from the Westerly corner of said East Twenty-fourth Street and Avenue E. and from thence running

(1) Northwesterly along said Southwesterly side of East Twenty-fourth Street twenty-five (25) feet, thence

(2) Southwesterly and parallel with Avenue E. seventy and fifty-four one-hundredths (70.54) feet to the center line of Osborn's Lane, thence

(3) Southeasterly along said center line about twenty-five (25) feet to a point where a line drawn from the point or place of beginning, parallel with Avenue E. would intersect said center line of Osborn's Lane, and thence

(4) Northeasterly and parallel with Avenue E. seventy and seventy-five one-hundredths (70.75) feet to the point or place of beginning.

Being the same premises conveyed to the said William H. Vreeland by Bertha C. Vreeland and another by deed dated December 13, 1906, and recorded in book 977 of Hudson County Deeds, at page 102, et seq.

74 Tenth. That thereafter and on or about the 8th day of April, 1915, the plaintiff above named duly instituted an action in the United States District Court for the District of New Jersey, against the said William H. Vreeland and Mary A. Vreeland, to foreclose the said mortgage, and for a decree directing the sale of the mortgaged premises for the benefit of the plaintiff herein. That said action was duly prosecuted to judgment, after the due personal service of the subpœna and bill of complaint therein upon the said William H. Vreeland and Mary A. Vreeland, and the sale of said premises was duly decreed. That thereafter and on the 16th day of November, 1915, the said premises were duly sold by the United States Marshal for the District of New Jersey, after due publication of notice of the said sale, at public auction to the highest bidder for the sum of One thousand one hundred seventy-five dollars ($1,175). That the expenses in connection with the said sale amounted to the sum of Sixty-three and 92/100 dollars ($63.92). That on about the 21st day of December, 1915, the said United States Marshal duly

paid to the plaintiff herein the net proceeds of the said sale amounting to One thousand one hundred eleven and 08/100 dollars ($1,111.08). That the said premises did not sell for a sum sufficient to pay the indebtedness secured by said bond and mortgage, and there is a deficiency therefrom amounting to Three hundred eighty-eight and 92/100 dollars ($388.92). That the said sale of the mortgaged premises was duly confirmed by this court on the 20th day of November, 1915.

Eleventh. That six months have not elapsed since the confirmation of the said sale.

75 Twelfth. That there now remains due upon the said assessment upon the capital stock of The First National Bank of Bayonne, so owned by the defendant, Mary A. Vreeland, Three hundred eighty-eight, and 92/100 dollars ($388.92), with interest on the sum of Fifteen hundred dollars ($1,500) from June 13, 1914 to December 21, 1915, and interest on the sum of Three hundred eighty-eight and 92/100 dollars ($388.92) from December 21, 1915, no part of which has been paid, although duly demanded.

Wherefore plaintiff demands judgment against the defendants for the sum of Three hundred eighty-eight and 92/100 dollars ($388.92) with interest on the sum of Fifteen hundred dollars ($1500) from June 13, 1914, to December 21, 1915, and on the sum of Three hundred eighty-eight and 92/100 dollars ($388.92) from December 21, 1915, together with the costs and disbursements of this action.

BARBER, WATSON & GIBBONEY,
Attorneys for Plaintiff.

Office & Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City, N. Y.

James Benny, Esq., having an office at No. 213 Broadway, City of Bayonne, County of Hudson, State of New Jersey, is hereby designated as a resident attorney upon whom process and papers in this action may be served.

76 STATE OF NEW YORK,
County of New York, ss:

Christopher L. Williams being duly sworn, deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

C. L. WILLIAMS.

Sworn to before me this 5th day of January, 1916.

[SEAL.] GEORGE M. BURDITT,
Notary Public, New York County.

EXHIBIT 3.

United States District Court, District of New Jersey.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff,

against

WILLIAM H. VREELAND, Defendant.

The plaintiff above named by Barber, Watson & Gibboney, his attorneys, complaining of the above named defendant, re-
77 spectfully shows and alleges, upon information and belief:

First. That the First National Bank of Bayonne was duly converted from a state bank, and duly organized under the provisions of the Banking Laws of the United States as a national banking association on the 5th day of December, 1906, with a capital stock of One hundred thousand dollars ($100,000) consisting of one thousand (1,000) shares of stock of the par value of One hundred dollars ($100) per share. That immediately thereafter, and on the 5th day of December, 1906, said The First National Bank of Bayonne commenced business as a national banking association in the City of Bayonne, County of Hudson and State of New Jersey.

Second. That the said First National Bank of Bayonne continued to do such banking business in the City of Bayonne, County of Hudson, State of New Jersey, until the 6th day of December, 1913, when the doors of said banking association were closed by order of the Comptroller of the Currency of the United States; and said Comptroller having become satisfied that the said The First National Bank of Bayonne was insolvent, under and pursuant to the provisions of Section 1 of an Act of Congress, entitled "An Act authorizing the appointment of receivers of national banks, and for other purposes," approved June 30th, 1876, otherwise known as Section 183 of the National Bank Act, duly appointed Charles H. Chapman receiver of said bank upon the 6th day of December, 1913; and that thereafter, the said Charles H. Chapman resigned as said receiver, to take effect on
the 7th day of March, 1914, and thereupon, and on said 7th
78 day of March, 1914, said Comptroller duly appointed Frank B. Shutts receiver of said bank, and thereafter said Frank B. Shutts resigned as said receiver, to take effect on the 19th day of June, 1914; and thereupon, and on said 19th day of June, 1914, said Comptroller duly appointed the plaintiff herein receiver of said bank.

Third. That the plaintiff thereafter, and on the 19th day of June, 1914, duly qualified as such receiver, and ever since has been, and now is, the duly appointed and qualified receiver of said The First National Bank of Bayonne.

Fourth. That the defendant above named is a citizen of the county of Hudson, State of New Jersey, domiciled within the District of New Jersey.

Fifth. That on the said 6th day of December, 1913, and for some

time prior thereto, the defendant, William H. Vreeland, was and had been the owner of One hundred twenty-five (125) shares of the capital stock of said banking association, certificates for which had been duly issued and delivered to him prior to the said 6th day of December, 1913, and had been so registered in his name. That on the said 6th day of December, 1913, certificates for twenty-five (25) shares of the capital stock of the said The First National Bank of Bayonne were registered in the name of said William H. Vreeland, and the remaining One hundred shares (100) of the capital stock of the said The First National Bank of Bayonne, so owned by the defendant were registered in the name of Mary A. Vreeland, wife of the defendant, to whom said shares were transferred by the defendant on about the 20th day of September, 1913. That the
79 said defendant is the owner and holder of said One hundred and twenty-five (125) shares of the capital stock of said The First National Bank of Bayonne.

Sixth. That on the 13th day of May, 1914, the said Comptroller of the Currency of the United States having become satisfied that in order to pay the debts of said The First National Bank of Bayonne, it was necessary to enforce the individual liability of stockholders thereof to the extent of one hundred (100) per cent. as prescribed by Sections 5151 and 5234 of the Revised Statutes of the United States, otherwise known as Sections 48 and 178 of the National Bank Act, made an assessment and requisition upon the shareholders of said The First National Bank of Bayonne for One hundred thousand dollars ($100,000), to be paid by them ratably on or before the 13th day of June, 1914, and demanded from each and every one of the shareholders of the said The First National Bank of Bayonne payment of One hundred Dollars ($100) upon each and every share of the capital stock of said banking association held or owned by them respectively at the time of its failure, to wit, December 6th, 1913; and said Comptroller of the Currency of the United States directed the Receiver of said banking association as such receiver to take all necessary proceedings by suit or otherwise to enforce to that extent the individual liability of the shareholders of the said The First National Bank of Bayonne.

Seventh. That thereafter, the receiver of the said banking association duly demanded of the defendant the payment of One hundred dollars ($100) per share on each of the shares of stock owned
80 by the defendant on the 6th day of December, 1913.

Eighth. That thereafter, and on or about the 13th day of June, 1914, the defendant, for the purpose of securing the payment to the then receiver of The First National Bank of Bayonne, or his successors in office, of the sum of Twelve thousand Five hundred Dollars ($12,500) due by virtue of the said requisition and assessment upon the capital stock owned by the defendant, duly executed under his hand and delivered to the then receiver, as aforesaid, his certain bond in the penal sum of Twenty-five thousand dollars ($25,000) lawful money of the United States of America, to be paid to the said receiver, his successors in office or assigns, with the condition thereunder written, that if the said William H. Vreeland, the de-

fendant herein, his heirs, executors or administrators, should well and truly pay or cause to be paid unto the then receiver of the said banking association, his successors in office or assigns, the just and full sum of Twelve thousand Five hundred dollars ($12,500) on the 14th day of September, 1914, then the said obligation should be void; and further recited that this bond is given to secure the payment of an assessment upon the one hundred twenty-five (125) shares of the capital stock of The First National Bank of the City of Bayonne, a national banking association formed under the National Bank Act, owned by William H. Vreeland.

Ninth. That as collateral security for the payment of the said indebtedness, as above set forth, the said defendant and Mary A. Vreeland, his wife, duly executed under their hands and seals, a
81 mortgage bearing date on that day, and duly delivered the same to the then receiver of the said banking association, wherein and whereby the said William H. Vreeland and Mary A. Vreeland, his wife, did grant, bargain, sell, alien, release, convey and confirm unto the then receiver of the said banking association, the following parcels of real estate situate in the City of Bayonne, in the County of Hudson and State of New Jersey, bounded and described as follows:

Beginning at a point in the Northeasterly line of East Thirty-third Street (Formerly Bayonne Avenue) distant three hundred and forty-two and five-tenths (342.5) feet Southeasterly from the Northeasterly line of Broadway (formerly Avenue D) and from thence running

(1) Northeasterly and parallel with Broadway one hundred and ninety (190) feet, thence

(2) Southeasterly and parallel with East Thirty-third Street fifty (50) feet, thence

(3) Southwesterly and parallel with Broadway one hundred and ninety (190) feet to the Northeasterly line of East Thirty-third Street and thence

(4) Northwesterly along the Northeasterly line of East Thirty-third Street fifty (50) feet to the point or place of beginning—

Being the same premises conveyed to the said William H. Vreeland by George Carragan and wife by deed dated October 12, 1901, and recorded in book 794 of Hudson County Deeds at page 251, et seq.

Also, all that certain tract or parcel of land and premises, situate in the City of Bayonne, in the County of Hudson and State of New Jersey, described as follows:—

Beginning at a point on the Southerly side of East Twenty-fourth Street (formerly Twenty-ninth Street) distant thereon one
82 hundred and eighty-six and five-tenths (186.5) feet Westerly from the intersection of the Westerly line of Avenue E, with the Southerly line of East Twenty-fourth Street, said point being also in the division line between the lands hereby intended to be conveyed and lands conveyed to Cornelius V. H. Vreeland by deed recorded in book 363 of Hudson County Deeds, at page 424, et seq. and from thence running

(1) Southerly along said last mentioned line and parallel with Avenue E seventy and seventy-five one-hundredths (70.75) feet to the center line of an old lane known as Osborne Lane, thence

(2) Westerly along the said last mentioned line twenty-five (25) feet, thence

(3) Northerly parallel with Avenue E seventy and thirty-three one-hundredths (70.33) feet to the southerly side of East Twenty-fourth Street and thence

(4) Easterly along the Southerly side of East Twenty-fourth Street twenty-five (25) feet to the point or place of beginning:—

Being the same premises conveyed to the said William H. Vreeland by Garrett L. Post and wife and another by deed dated June 10, 1902, and recorded in book 812 of Hudson County Deeds, at page 208, et seq.

Tenth. That thereafter and on or about the 8th day of April, 1915, the plaintiff above named duly instituted an action in the United States District Court for the District of New Jersey, against the said William H. Vreeland and Mary A. Vreeland, to foreclose the said mortgage, and for a decree directing the sale of the mortgaged premises for the benefit of the plaintiff herein. That said action was duly prosecuted to judgment, after the due personal service of the subpœna and bill of complaint therein upon the said William H. Vreeland and Mary A. Vreeland, and the sale of the said
83 premises was duly decreed. That thereafter and on the 16th day of November, 1915, the said premises were duly sold by the United States Marshal for the District of New Jersey, after due publication of notice of the said sale, at public auction to the highest bidder, and the first described parcel was sold for the sum of Six thousand and fifty dollars ($6,050), and the second described parcel was sold for the sum of Eleven hundred and fifty dollars ($1150). That the expenses in connection with the said sale amounted to the sum of One hundred and twenty-seven and 47/100 dollars ($127.47). That on about the 21st day of December, 1915, the said United States Marshal duly paid to the plaintiff herein the net proceeds of the said sale amounting to Seven thousand seventy-two and 53/100 dollars ($7,072.53). That the said premises did not sell for a sum sufficient to pay the indebtedness secured by said bond and mortgage, and there is a deficiency therefrom amounting to Five thousand Four hundred twenty-seven and 47/100 dollars ($5,427.47). That the said sale of the mortgaged premises was duly confirmed by this court on the 20th day of November, 1915, by orders duly made and entered in the said action.

Eleventh. That six months have not elapsed since the confirmation of the said sale.

Twelfth. That there remains now due upon the said assessment upon the capital stock of The First National Bank of Bayonne so owned by the defendant, Five thousand Four hundred twenty-seven and 47/100 dollars ($5,427.47), with interest on the sum of Twelve thousand Five hundred dollars ($12,500) from June 13, 1914, to

December 21, 1915, and with interest on the sum of Five
84 thousand Four hundred twenty-seven and 47/100 dollars ($5,-
427.47) from December 21, 1915, no part of which has been paid, although duly demanded.

Wherefore plaintiff demands judgment against the defendant for the sum of Five thousand four hundred twenty-seven and 47/100 ($5,427.47) with interest on the sum of Twelve thousand Five hundred dollars ($12,500) from June 13, 1914, to December 21, 1915, and on the sum of Five thousand four hundred twenty-seven and 47/100 dollars ($5,427.47) from December 21, 1915, together with the costs and disbursements of this action.

BARBER, WATSON & GIBBONEY,
Attorneys for Plaintiff.

Office & P. O. Address: 165 Broadway, Borough of Manhattan, New York City, N. Y.

James Benny, Esq., having an office at No. 213 Broadway, City of Bayonne, County of Hudson, State of New Jersey, is hereby designated as a resident attorney upon whom process and papers in this action may be served.

STATE OF NEW YORK,
County of New York, ss:

Christopher L. Williams, being duly sworn deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein
85 stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

C. L. WILLIAMS.

Sworn to before me this 5th day of January, 1916.

[SEAL.] GEO. M. BURDITT,
Notary Public, New York County.

EXHIBIT 4.

Two registry sheets from loose leaf book kept by Mechanics Trust Company showing registry of capital stock of the First National Bank of Bayonne.

The two certificates Nos. 124 and 125 issued to Mary A. Vreeland are not recorded on the exhibit.

86 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1917.

No. 2239.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff in Error,

vs.

MARY A. VREELAND, Defendant in Error.

And afterwards, to wit, on the 27th day of April, 1917, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Hon. Joseph Buffington, Hon. John B. McPherson, and Hon. Victor B. Woolley, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof:

And afterwards, to wit, on the 21st day of August, 1917, come the parties aforesaid by their counsel aforesaid, and the Court now being fully advised in the premises, renders the following decision:

87 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1917.

No. 2239.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff Below-Plaintiff in Error,

vs.

MARY A. VREELAND, Defendant Below-Defendant in Error.

Writ of Error to the District Court of the United States for the District of New Jersey.

Before Buffington, McPherson, and Woolley, Circuit Judges.

WOOLLEY, *Circuit Judge:*

The single question is, whether the defendant is liable for an assessment, under Section 5151 R. S. on stock standing in her name on the books of an insolvent national bank.

In September 1913, William H. Vreeland was the record owner of 125 shares of stock of the First National Bank of Bayonne, and Mary A. Vreeland, his wife, was the record owner of 15 shares. After the declaration of a dividend, and before its payment on October 1st following, Vreeland resolved to make a present to his wife of 100 of his shares. He did not, either then or later, disclose or even re-

motely intimate to her his intention, but proceeded to carry it out by surrendering to the bank certificates in his name for 100 shares, and having issued certificates in her name for a like number, and requesting that a cheque for the declared dividend on the
88 shares be drawn in her favor. It being impracticable to comply with this request, because dividend cheques had already been drawn to shareholders of record upon the closing of the books, he accepted the new certificates in his wife's name and a cheque for dividends thereon in his own name.

Within a day or two Vreeland changed his mind about presenting the shares to his wife, and without mentioning the matter to her, consulted the bank's president as to a method of getting them back in his name, representing that the shares were good collateral and if given to his wife it might be awkward to get them again. The bank official advised him to procure his wife's signature to the customary power of attorney on the back of the certificate, and instructed him how the shares could again be placed in his name by transfer and registration of the wife's certificates (which had not been registered) and registration of the new certificates to be issued. He thereupon secured his wife's signature, but never surrendered the certificates for transfer or registration. He endorsed the dividend cheque and presented it to his wife, who likewise endorsed it and got the dividend. To that extent he carried out his idea of a gift, without telling his wife the measure of his first intention.

With the certificates of Mary A. Vreeland endorsed and outstanding, the bank failed, and a receiver took over its affairs. The comptroller of the Currency levied an assessment under Section 5151 R. S. of 100 per cent. against the bank's shareholders. Although 115 shares were then standing in the name of Mary A. Vreeland on the stock ledger and notice of assessment on that number was mailed to her, the receiver treated 100 of these shares as though they belonged to her husband. In enforcing the assessment against both Vreelands, (who were without money yet were possessed of property,) the receiver took the bond of William H. Vreeland for $25,000, conditioned for the payment of his assessment of $12,500 on
125 shares (25 shares admittedly being his and 100 being the
89 shares represented by his wife's certificates then in his hands).

In this bond his wife joined to bar her dower. At the same time Mary A. Vreeland gave a bond for $3,000, conditioned for the payment of her assessment of $1,500 on her 15 shares. In this bond her husband joined. Execution was issued on both, followed by sales resulting in deficiencies. Mary A. Vreeland paid the deficiency on her bond and thus fully met the assessment against her 15 shares. William H. Vreeland had in the meantime gone into bankruptcy, and was unable to meet the deficiency on his bond, amounting to $5,660.80 and interest. Thereupon the receiver shifted his attack and instituted this suit against Mary A. Vreeland on her liability under Section 5151 R. S. upon the 100 shares which stood in her name, seeking to recover the deficiency on her husband's bond, given to meet the assessment enforced against him on the same 100 shares.

The trial court found it unnecessary, as we do, to pass upon questions raised as to the release of the wife's liability because the certificates for the shares had not been registered and because demand for the amount of the assessment had been made upon and settlement accepted from her husband. The determining question was and is, what was the liabilty of the wife on the record entry of her stock holding at the time of the assessment.

At the trial, the receiver proved that the defendant was a record shareholder. This the defendant admitted but pleaded her ignorance of it, showing by the testimony of others the circumstances how she became such and by her own testimony how she in ignorance continued such. The receiver also proved that she had done nothing to cause her name to be removed from the record. This she also admitted.

As there was no dispute in the testimony, counsel agreed that there was no question for the jury, and on motions for binding instructions for both the plaintiff and defendant, submitted the question to the court.

90 The question submitted, as we understand it, was not a question of what is the legal liability of a record shareholder of a national bank to assessment under Section 5151 R. S. That liability, under varying circumstances, has been defined by the statute and settled by the courts. The question, as we view it, was one of evidence, or rather, of the sufficiency of evidence to bring the defendant as a shareholder within or to excuse her from the liability imposed by law.

Section 5151 U. S. R. S. provides, that shareholders of a national bank shall be individually and ratably responsible for all debts and engagements of the bank to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares. This is generally known as the "double liability" act. As to its effect upon a record holder of stock, the Supreme Court has said (Matteson vs. Dent, 176 U. S. 521):

"But the settled doctrine is that as a general rule the legal owner of stock of a national bank association—that is, the one in whose name stock stands on the books of the association—remains liable to the association so long as the stock is allowed to stand in his name on the books, and consequently that although the registered owner may have made a transfer to another person unless it has been accompanied by a transfer on the books of registry of such association such a registered owner remains liable."

When, therefore, a person becomes a record shareholder with full knowledge of the fact, he continues such (notwithstanding he may have disposed of his shares) until by his act he removes his name from the record. But it has developed in the cases that persons have become and have for a time continued record shareholders without knowledge of that fact. With respect to the liability of such the Supreme Court has expressed itself. In Keyser vs. Hitz, 133 U. S. 138, the court, speaking with reference to the facts of that case, said:

"It is true, as already suggested, there was evidence tending to

show that the transfers of stock were made originally without defendant's knowledge, and the jury might reasonably have concluded under all the evidence that the transfers were made, and caused to be made, by her husband. * * * The vital question remained whether the defendant became the owner of the stock within the meaning of the statute regulating the individual liability of the shareholders of national banking associations.

"If she became aware of the transfers, after they were made, and thereafter received the dividends, she became a shareholder for all purposes of individual liability in respect to the contract, debts and engagements of the bank as fully as if the transfers had been made originally with her knowledge and consent. * * *

91 "We must not be understood as saying that the mere transfer of the stocks on the books of the bank to the name of the defendant imposed upon her the individual liability attached by law to the position of shareholder in a national banking association. If the transfers were, in fact, without her knowledge or consent, and she was not informed of what was so done, nothing more appearing, she would not be held to have assumed or incurred liability for the debts, contracts and engagements of the bank. But, if after the transfers she joined in the application to convert the savings bank into a national bank, or in any other mode approved, ratified or acquiesced in such transfers, or accepted any of the benefits arising from the ownership of the stock thus put in her name on the books of the bank, she was liable to be treated as a shareholder with such responsibility as the law imposes upon the shareholders of national banks."

The test of liability therefore seems to be the fact of being a record shareholder, knowledge of that fact, and some act in approval or ratification of it. Along this line the cases have been tried.

In Kenyon vs. Fowler, 155 Fed. 107, affirmed 215 U. S. 593, the case turned on the defendant's admitted knowledge, that by an unauthorized act stock had been placed in his name for the ostensible purpose of holding him out as a stockholder, and on the inference of his acquiescence therein because of his failure to disapprove or repudiate the act.

In Keyser vs. Hitz, 133 U. S. 138, stock had been placed in the name of the defendant without her knowledge, but knowledge thereafter was imputed to her by her acts in joining in an application to convert the savings bank into a national bank, and by accepting cheques for dividends on the stock drawn to her order and by her endorsed. Having accepted benefits arising from her stock ownership she was estopped to deny her liability. National Bank vs. Case, 99 U. S. 628, 682; Paisly vs. State Loan & Trust Co., 165 U. S. 606, 612.

In Finn vs. Brown, 142 U. S. 56, 57, the person in whose name stock was entered on the books, was a director of the bank and acting cashier. To become the former he had to be a stockholder, and had to make an affidavit that he was a stockholder; while as a part of his duties in the latter position, he kept the stock ledger. He was there-

fore conclusively presumed to have known that he was a stockholder.

92 The law of ratification which we think applies to the case in hand, is that stated by the Court of Appeals of New York in Glenn vs. Grath, 133 N. Y. 459, as follows:

"It (a ratification) implies a conscious and intended approval of the act done. It rests upon the actual and existing purpose to make such approval. Hence, the courts say, that it must occur with full knowledge of all the facts."

Referring to the principle of estoppel, the court said:

"That question is not reached, because before it can be reached there must be shown to exist some act of the party, done by him or with his assent, creating the alleged apparent relation. That fact must be established before any question of estoppel can arise. If the act done, the false appearance created, is the act, not of the party, but of some third person, such party is in no manner bound or affected by it unless he either originally authorized it or subsequently ratified it."

And again the court said:

"Where the shareholder consciously accepts that relation, he ought to bear its burdens as well as enjoy its benefits, and it is easy to imply a promise to perform that duty. But where he does not accept the relation, where it was put upon him by another without authority and against his will, where instead of accepting its benefits, he repudiates them at serious loss, where his mind and that of the company never met in any contractual relation, where it was not his duty to pay, and he explicity refused to take what was offered, all foundation for an implied promise is gone. The facts do not admit of it, for the law does not raise a fiction to accomplish a wrong. And thus again we come to the proposition that the real truth must be ascertained, and when ascertained must control. And that real truth is that the defendants repudiated and did not ratify the unauthorized act of McKim. The whole force of a ratification lies in conscious and intended assent with full knowledge of the facts. If there is no such intent and no such violation, but a contrary intent and an opposite purpose, there is no ratification. The absence of any such intent and the presence of a different one is clearly disclosed by the facts."

This being the law, the question in this case, as we have said, becomes one of evidence: Has the plaintiff established the defendant's liability by sufficient testimony? Or has the defendant overcome the plaintiff's case by evidence sufficient to establish her non-liability?

The plaintiff proved that the defendant was a shareholder of record and that she did nothing to remove her name as such. This was sufficient to establish prima facie the defendant's liability. (Finn vs. Brown, 142 U. S. 56, 57; Matteson vs. Dent, 176 U. S. 521, 530). The burden then shifted to her (Finn vs. Brown,

93 supra) to show that the act of making her a shareholder was in the first instance unauthorized; that it was without her knowledge or consent; and that she has not since acquiesced in or

ratified it. That she has sustained the burden upon the first two points is not disputed; therefore the remaining question is as to evidence of her ratification.

Evidence of the defendant's ratification is restricted to her two acts, first, of endorsing a dividend cheque and receiving the dividend; and, second, of endorsing the certificates of stock, that is, of signing the power of attorney on the back of each. The first may readily be disposed of.

It is urged that in signing the dividend cheque the defendant came within the case of Keyser vs. Hitz, supra. In that case the wife received three cheques made to her order. The cheques showed by appropriate printing that they were dividend cheques on stock of a named national bank. By endorsing them the court charged her with knowledge of what they inevitably told her. But here the cheque endorsed by the wife, though a dividend cheque, was made to the order of the husband, who first endorsed it. Her endorsement of a cheque made payable to the order of her husband, in carrying out what indubitably was a present to her, did not charge her with notice that the stock upon which the dividend was declared stood in her name. Following the reasoning in Keyser vs. Hitz, the legal inference and imputation are just the contrary. By accepting from her husband a dividend cheque made payable to his order, she was justified in thinking that the stock upon which it was issued stood in his name. This thought, doubtless, had a bearing upon her next act.

The defendant's next and last act in relation to the bank stock which had been placed in her name without her knowledge or consent, was in affixing her signature to the power of attorney upon the back of each certificate. This she did without looking at their face, or learning what they were. Her husband placed the certificates before her, face down, and said, "May, will you sign these
94 papers for me?" She said, "What are they?" He replied, "They are some bank stock; I have made a mistake." Continuing, she testified, "I didn't know that the certificates were in my name; I didn't know anything about them; I knew that Mr. Vreeland would not ask me to do anything I should not do; he never has. * * * He didn't tell me it was in my name. * * * He didn't tell me in what respect he had made a mistake. I didn't feel that he should explain it. He just said he had make a mistake and asked me to sign it. That was all."

Considering this testimony in connection with corroborating testimony, it appears to us, that what Mary A. Vreeland did, in legal effect, was to make a valid execution of a power of attorney for the transfer of stock. That act, in so far as it authorized a transfer of stock, she cannot avoid by pleading ignorance. As the question here does not involve the validity of the act to effect a transfer, but concerns its evidential imputation of the knowledge with which it was done, we are of opinion that the circumstances which attended the act were a part of it, and affected the evidential inferences to be drawn from it. These circumstances show, that before acting, the defendant requested to be informed as to what she was asked to do;

this information was denied her. It was denied her under representations and influences, which, when she acted, led her to believe she was doing something entirely different from that which she was actually doing; that is, she was made to believe she was correcting a mistake of her husband, a mistake affecting his affairs, not that she was dealing with or assigning away her own property. Therefore, we think the circumstances were such as to negative the knowledge, which otherwise it is presumed her act would have imparted. They contradicted the normal imputations of her act, and left her without that knowledge which was a prerequisite to a valid ratification of her husband's unauthorized act.

Upon this line of reasoning we think the court's finding for the defendant upon the evidence can be sustained. But aside from the interpretation favorable to the defendant, of which we think
95 the evidence is susceptible, we are of opinion the judgment must be sustained upon an altogether different ground.

There is an undoubted presumption of law, that Mary A. Vreeland knew what she was doing when she endorsed the certificates of stock and that she knew their contents, and thus she ratified the act of her husband. Being a presumption it stands in lieu of evidence of the fact, and had it not been rebutted, it would have been sufficient to fasten liability upon her. Being only a presumption, she endeavored to rebut it by evidence. While neither the evidentiary presumption nor the rebuttal evidence was disputed, the two were in conflict. If the case had gone to the jury with the evidence in this state, the judge doubtless would have submitted the question of her knowledge, and the jury's finding upon the fact of her knowledge would have concluded both parties. Instead of submitting the case to the jury, however, each party asked the court for binding instructions in his favor, which, under Beuttell vs. Magone, 157 U. S. 154, is not a submission to the court without the intervention of a jury, within the intent of Rev. Stat. Secs. 649, 700, but is equivalent to a joint request for a finding of fact by the court, and when the court, acting upon such requests, directs the jury to find for one of the parties, both are concluded on its finding.

In this case the parties submitted to the court the question of the wife's ratification of her husband's unauthorized act; that question was one of fact; upon it depended her liability. The court's decision, as evidenced by its instruction to the jury that they render a verdict for the defendant, was a finding of fact, which concluded both parties as effectually as if the same fact had been found by the jury.

The judgment below is affirmed.

Endorsed: No. 2239. Opinion of the Court by Woolley, J. Received and filed Aug. 21, 1917. Saunders Lewis, Jr., Clerk.

96 In the United States Circuit Court of Appeals for the Thir Circuit, March Term, 1917.

2239 (List No. 52).

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Ban of Bayonne, Plaintiff in Error,

vs.

MARY A. VREELAND, Defendant in Error.

In Error to the District Court of the United States for the District o New Jersey.

This cause came on to be heard on the transcript of record from th District Court of the United States, for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged b this Court, that the judgment of the said District Court in this caus be, and the same is hereby affirmed, with costs.

(Signed) VICTOR B. WOOLLEY,
Circuit Judge.

Philadelphia, August 21, 1917.

Endorsed: No. 2239. Order Affirming Judgment. Received an filed Aug. 21, 1917. Saunders Lewis, Jr., Clerk.

97 Treasury Department.

WASHINGTON, October 12, 1917.

Comptroller of the Currency.
p. B.

Mr. Stuart G. Gibboney, Attorney at Law, New York, N. Y.

SIR: Your letter of October 8, addressed to Mr. B. F. Buchana of this office, received, enclosing copy of the opinion of the Circui Court of Appeals for the Third Circuit in the case of Williams, Re ceiver, First National Bank, Bayonne v. Mary A. Vreeland. Yo also enclose copy of your brief on this appeal.

It appears from the enclosures in your letter that suit was insti tuted to enforce stock assessment against Mrs. Vreeland for whic she denied liability. A judgment was entered in her favor in th District Court which was appealed to the Circuit Court of Appeal where the lower court was affirmed.

You now advise that an appeal should be taken to the Suprem Court, being of opinion that the decisions of the lower courts are i conflict with Kenyon v. Fowler, 155 Fed., 107, affirmed by 215 U. S 593.

While it is not believed that the case is altogether free from doubt the question is one of importance and your recommendation is approved and you are authorized to take such steps as may be necessary to perfect the appeal of this case to the Supreme Court of the United States.

Respectfully,
(Signed) T. P. KANE,
Acting Comptroller.

Endorsed: No. 2239. Received and filed Dec. 4, 1917. Saunders Lewis, Jr., Clerk.

98 United States Circuit Court of Appeals for the Third Circuit.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff-in-Error,

against

MARY A. VREELAND, Defendant-in-Error.

Now comes the plaintiff in error, Christopher L. Williams, as Receiver of the First National Bank of Bayonne, by Stuart G. Gibboney, his attorney, and says, that in the records and proceedings aforesaid in the United States Circuit Court of Appeals for the Third Circuit, in the above entitled cause, and in the rendition of final judgment therein, manifest error hath intervened to the prejudice of the said plaintiff in error, in this, to wit:

I.

The United States Circuit Court of Appeals for the Third Circuit erred in affirming the judgment of the District Court of the United States for the District of New Jersey, entered on the 19th day of December 1916, in favor of Mary A. Vreeland, the defendant in said cause, and against this plaintiff in error, the plaintiff therein.

II.

The said Circuit Court of Appeals erred in not reversing the said judgment.

III.

The United States District Court for the District of New Jersey erred in directing a verdict for the defendant.

99 IV.

The said Circuit Court of Appeals erred in affirming the action of said District Court in this regard.

V.

The said District Court erred in denying the motion made b counsel for the plaintiff in error for a direction of a verdict in favo of the plaintiff.

VI.

The said Circuit Court of Appeals erred in affirming the action o the District Court in this regard.

VII.

The said District Court erred in receiving the evidence of the wi ness William H. Vreeland and permitting him to testify over plain tiff's objection as follows:

"Q. Now, then, just prior to the signing of these papers did yo have any conversation with the Receiver with reference to the pay ment of the assessment on the 125 shares of stock?

Q. What conversation did you have?

Mr. Gibboney: I object to that.

The Court: I will admit it.

Plaintiff's counsel asks an exception which is hereby allowed an sealed accordingly.

THOMAS G. HAIGHT, *D. J.*

(Sealed.)

A. I told Mr. Shutts, the Receiver at that time that I had som property which was free and clear and from which I would pay m assessment on the 125 shares of stock. He asked me what it wa worth, and I told him about $14,000. He said he would conside the matter for a day or two or a few days and let me know. A few days later he notified me that he would accept it and h
100 notified Mr. Chamberlain the attorney for the Receiver at tha time to draw up the paper."

VIII.

The said Circuit Court of Appeals erred in affirming the action o the District Court in this regard.

IX.

The said District Court erred in receiving the evidence of the wi ness George Carragan and permitting him to testify over plaintiff objection as follows:

"Q. Now go on and tell us what else transpired?

A. The next day or a day or so afterward——

Mr. Gibboney I object to any other conversation after the stoc was issued.

The Court: I will permit it.

Plaintiff's counsel asks an exception which is hereby allowed and sealed accordingly.

THOMAS G. HAIGHT, *D. J.*

(Sealed.)

A. The next day or a day or two afterwards he came in and he said 'George, I think I made a mistake.'

Mr. Gibboney: Just a moment; this was after the stock was issued, Mr. Carragan?

The Witness: After the stock was issued.

A. 'I think I made a mistake in having that stock changed. I am getting a good collateral out of my hands. If I want to get any money from any other bank I want to use that as collateral.' 'Well,' I said, 'I have made the certificate out in that way. You get your wife to endorse it. It will have to go down and be registered at the Mechanic's Trust Company. It is no good as it is, it will have to be registered,' and I said, 'It will take two registrations now in order to get that through, first we will have to register them into
101 your wife's name and then back into your own name.' 'Well,' he said, 'I will bring it in and have it changed that way.' "

X.

The said Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

Wherefore, the plaintiff in error, Christopher L. Williams, as Receiver of the First National Bank of Bayone, prays that the judgment of the Circuit Court of Appeals for the Third Circuit may be reversed; that the judgment of the District Court of the United States for the District of New Jersey be reversed, and that instructions be given that the plaintiff and plaintiff in error have judgment against the defendant for the sum of Six thousand Five hundred ninety-four and 13/100 dollars ($6,594.13) with interest at the rate of six per cent per annum from December 21, 1915, together with the costs and disbursements of the action; or that a new trial be granted.

CHRISTOPHER L. WILLIAMS,
As Receiver of the First National Bank of Bayonne,
By STUART G. GIBBONEY,
Attorney for Plaintiff-in-Error.

Office & Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City.

Endorsed: No. 2239. Assignment of Errors. Received and Filed Dec. 4, 1917. Saunders Lewis, Jr., Clerk.

102 United States Circuit Court of Appeals for the Third Circuit.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff-in-Error,

against

MARY A. VREELAND, Defendant-in-Error.

To the Honorable Judges of the United States Circuit Court of Appeals for the Third District:

Your petitioner, Christopher L. Williams, as Receiver of the First National Bank of Bayonne, plaintiff in error in the above entitled cause, respectfully shows:

That the above entitled cause is now pending in the United States Circuit Court of Appeals for the Third Circuit, and a mandate has therein been rendered on the 20th day of September 1917, affirming the judgment of the District Court of the United States for the District of New Jersey, and the matter in controversy in said suit exceeds the sum of One thousand dollars ($1,000) besides costs, and the jurisdiction of the courts above mentioned was not in any wise put in issue nor was or is in any way questioned, and the cause does not arise under the patent laws or the revenue laws or criminal laws and is not an admiralty cause and is a proper case to be reviewed by the Supreme Court of the United States upon a Writ of Error, and this petition is filed pursuant to a direction of the Comptroller of the Currency of the United States of America, which direction is filed herewith.

Therefore, your petitioner does respectfully pray that a
103 Writ of Error be allowed him in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Third Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States in order that the errors complained of in the Assignment of Errors herewith filed by the said plaintiff in error may be reviewed and if an error be found corrected according to the laws and customs of the United States.

CHRISTOPHER L. WILLIAMS,
As Receiver of the First National Bank of Bayonne.
STUART G. GIBBONEY,
Attorney for Plaintiff in Error.

Office & Post Office Address: No. 165 Broadway, Borough of Manhattan, New York City.

The foregoing petition is granted, and a Writ of Error allowed as prayed for, and the filing of a bond for costs dispensed with by reason

of this appeal being brought by direction of the Comptroller of the Currency of the United States.

Dated, December 4, 1917.

(Signed) JOS. BUFFINGTON,
Judge U. S. Circuit Court of Appeals, Third Circuit.

Endorsed: No. 2239. Petition for Writ of Error and Order Allowing Writ of Error. Received and filed Dec. 4, 1917. Saunders Lewis, Jr., Clerk.

104 United States Circuit Court of Appeals for the Third Circuit.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff-in-Error,

against

MARY A. VREELAND, Defendant-in-Error.

UNITED STATES OF AMERICA, *ss:*

[Seal United States Circuit Court of Appeals, Third Circuit.]

The President of the United States to the Honorable Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between Christopher L. Williams, as Receiver of the First National Bank of Bayonne, Plaintiff in error, and Mary A. Vreeland, Defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by his complaint appears.

We, being willing that the error, if any hath been, should be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so
105 that you have the same in the Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right according to the laws and customs of the United States should be done.

Witness, Honorable Edward D. White, Chief Justice of the United States the 4th day of December in the year of our Lord One thousand nine hundred and seventeen.

(Signed) SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals for the Third Circuit.

Allowed.

(Signed) JOS. BUFFINGTON,
United States Circuit Judge.

Endorsed: No. 2239. Writ of Error.

106 United States Circuit Court of Appeals for the Third Circuit.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff-in-Error,

against

MARY A. VREELAND, Defendant-in-Error.

UNITED STATES OF AMERICA, *ss:*

[Seal United States Circuit Court of Appeals, Third Circuit.]

The President of the United States to Mary A. Vreeland, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden in the City of Washington, D. C., within thirty days from the date hereof, pursuant to a writ of Error filed in the office of the Clerk of the Circuit Court of Appeals of the United States for the Third Circuit, wherein Christopher L. Williams, as Receiver of the First National Bank of Bayonne, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Christopher L. Williams, as Receiver of the First National Bank of Bayonne, plaintiff in error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, Honorable Edward D. White, Chief Justice of the United States, this 4th day of December in the year of our Lord One thousand nine hundred and seventeen.

(Signed) JOS. BUFFINGTON,
Judge of the U. S. Circuit Court of Appeals for the Third Circuit.

107 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, ss:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original transcript of record and proceedings in this Court in the case of Christopher L. Williams, as Receiver of the First National Bank of Bayonne, New Jersey, Plaintiff in Error, vs. Mary A. Vreeland, Defendant in Error, No. 2239, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this seventh day of December in the year of our Lord one thousand nine hundred and seventeen and of the Independence of the United States the one hundred and forty-second.

[Seal United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

108 United States Circuit Court of Appeals for the Third Circuit.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff-in-Error,

against

MARY A. VREELAND, Defendant-in-Error.

UNITED STATES OF AMERICA, *ss:*

[Seal United States Circuit Court of Appeals, Third Circuit.]

The President of the United States to the Honorable Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Because in the record and proceedings, as also in the rendition of judgment of a plea which is in the said Circuit Court of Appeals before you, or some of you, between Christopher L. Williams, as Receiver of the First National Bank of Bayonne, Plaintiff in error, and Mary A. Vreeland, Defendant in error, a manifest error hath happened to the great damage of the said plaintiff in error, as by his complaint appears,

We, being willing that the error, if any hath been, should be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ, so
109 that you have the same in the Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right according to the laws and customs of the United States should be done.

Witness, Honorable Edward D. White, Chief Justice of the United States the 4 day of December in the year of our Lord One thousand nine hundred and seventeen.

SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals for the Third Circuit.

Allowed.
JOS. BUFFINGTON,
United States Circuit Judge.

110 [Endorsed:] 2239. United States Circuit Court of Appeals for the Third Circuit. Christopher L. Williams, as Receiver, etc., Plaintiff in Error, against Mary A. Vreeland, Defendant in Error. Writ of Error. Stuart G. Gibboney, Attorney for Plaintiff in Error, 165 Broadway, New York City.

111 United States Circuit Court of Appeals for the Third Circuit.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, Plaintiff-in-Error,

against

MARY A. VREELAND, Defendant-in-Error.

UNITED STATES OF AMERICA, *ss:*

[Seal United States Circuit Court of Appeals, Third Circuit.]

The President of the United States to Mary A. Vreeland, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden in the City of Washington, D. C., within thirty days from the date hereof, pursuant to a writ of Error filed in the office of the Clerk of the Circuit Court of Appeals of the United States for the Third Circuit, wherein Christopher L. Williams, as Receiver of the First National Bank of Bayonne, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Christopher L. Williams, as Receiver of the First National Bank of Bayonne, plaintiff in error, as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, Honorable Edward D. White, Chief Justice of the United States, this 4 day of December in the year of our Lord One thousand nine hundred and seventeen.

JOS. BUFFINGTON,
Judge of the U. S. Circuit Court of Appeals for the Third Circuit.

112 [Endorsed:] United States Circuit Court of Appeals for the Third Circuit. Christopher L. Williams, as Receiver, etc., Plaintiff in Error, against Mary A. Vreeland, Defendant in Error. Citation. Stuart G. Gibboney, Attorneys for Plaintiff in Error, 165 Broadway, New York City.

Service of a copy of the within citation is admitted this 5th day of December, 1917.

PIERRE P. GARVEN,
—— *Appellee.*

Endorsed on cover: File No. 26,261. U. S. Circuit Court Appeals, 3d Circuit. Term No. 794. Christopher L. Williams, as receiver of the First National Bank of Bayonne, New Jersey, plaintiff in error, vs. Mary A. Vreeland. Filed December 18th, 1917. File No. 26,261.

Supreme Court of the United States

OCTOBER TERM, 1918

No. 318

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, New Jersey,

Plaintiff-in-Error,

vs.

MARY VREELAND,

Defendant-in-Error.

Writ of Error to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR PLAINTIFF-IN-ERROR.

BARBER, WATSON & GIBBONEY,
Solicitors for Plaintiff-in-Error.

STUART G. GIBBONEY,
Of Counsel.

B. H. TYRRELL, PRINTER, 206-8 FULTON STREET, NEW YORK.

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Supreme Court of the United States,

OCTOBER TERM, 1918.

No. 318.

CHRISTOPHER L. WILLIAMS, as Receiver of the First National Bank of Bayonne, New Jersey,
Plaintiff-in-error,

vs.

MARY A. VREELAND,
Defendant-in-error.

BRIEF FOR PLAINTIFF-IN-ERROR

Names of the parties and the nature of proceedings.

This is an appeal from a judgment of the United States Circuit Court of Appeals for the Third Judicial Circuit affirming a judgment in favor of the defendant entered in the United States District Court for the District of New Jersey, upon a

verdict directed by the Hon. Thomas G. Haight, District Judge. Christopher L. Williams, as Receiver of the First National Bank of Bayonne, is plaintiff, and Mary A. Vreeland is defendant. They are the sole parties to the action.

The action was at law to recover the balance due upon an assessment made pursuant to Section 5151 of the United States Revised Statutes, upon the stockholdings of the defendant in the First National Bank of Bayonne.

Abstract of Pleadings.

The complaint alleges the organization of the First National Bank of Bayonne under the laws of the United States of America with an authorized capital of One hundred thousand dollars ($100,000) consisting of one thousand shares of stock of the par value of One hundred dollars ($100) each; the appointment of a receiver of the banking association December 8, 1913, and of two other receivers of which the complainant is the last. These formal allegations of the complaint are admitted. (Pp. 2-3-7.)

It is further alleged that on December 6, 1913, the defendant was a shareholder of record of the said banking association, prior to which date certificates for 115 shares of the capital stock thereof had been issued and delivered in the name of the defendant, and that on said December 6, 1913, they were duly registered in the name of the defendant; that for some time prior to December 6, 1913, the defendant knew that the said certificates had been issued to her and had been registered in her name on the books of the said association. The answer admits that the defendant was the

holder of 15 shares, and denies all the other allegations of the complaint. (Pp. 4-7.) The defendant admits that on May 13, 1914, the Comptroller of the Currency of the United States levied an assessment pursuant to the Revised Statutes of the United States. (Pp. 4-7.)

It is alleged that thereafter the Receiver demanded of the defendant the payment of One Hundred dollars ($100) per share on each of the shares of stock registered in her name on the 6th day of December, 1913. (P. 5.) She admits that a demand was made upon her upon 15 shares of stock and alleges that she paid the assessment thereon. It is denied that the amount claimed is due. (Pp. 5-7.)

As a second defense it is alleged that the defendant was a shareholder of record in said banking association to the extent of 15 shares from May 5, 1910, to December 6, 1913; that on September 25, 1913, William H. Vreeland, her husband, was the owner of 125 shares, on which date he, after a talk with the President of the association concerning the payment of a dividend upon 100 shares of his holdings to his wife, had issued certificates for 100 shares of his holdings in the name of the defendant in this action, and that on October 1, 1913, Mr. Vreeland gave the dividend on his total holdings of 125 shares to the defendant, informed her that certificates for 100 shares had been made out in her name, and requested her to assign said certificates back to him, which she immediately did; that the certificates made out in defendant's name were not countersigned by the registrar nor registered upon its books; that Mr. Vreeland executed two mortgages to the Receiver to secure the payment of an as-

sessment upon the full 125 shares of the stock, including the 100 shares in defendant's name, which mortgages were foreclosed at a net realization of Seven thousand two hundred dollars ($7,200). (P. 7, *et seq.*)

The Questions Involved.

1. Is the defendant liable for an assessment pursuant to the provisions of Section 5151 U. S. R. S.?

2. Did the defendant take such steps as were necessary to have her name as a shareholder of record removed from the books of the banking association?

These questions can best be answered by determining the following questions:

Was the defendant a stockholder of record of the 100 shares of stock involved in this litigation from September 25, 1913, to the closing of the Bank?

Could the defendant be charged with knowledge that 100 shares of stock owned by her husband had been transferred to her and certificates issued in her name?

Statement of Case.

The First National Bank of Bayonne closed its doors December 6, 1913. The institution continued in the hands of a receiver down to the time of this trial. (P. 22.) The Comptroller of the Currency having become satisfied of the necessity therefor, and in pursuance of the authority conferred upon him by Section 5151 U. S. R. S., levied an assessment and made requisition upon the

shareholders of the banking association for One hundred thousand dollars ($100,000), or One hundred per cent (100%), payable on or before the 13th day of June, 1914. (P. 66, Ex. 8.)

On September 25, 1913, two certificates numbered 124 and 125 for 50 shares each of the capital stock of the banking association were issued in the name of Mary A. Vreeland in place of three certificates numbered 92, 106 and 110 for 50, 42 and 8 shares respectively standing in the name of William H. Vreeland, her husband. (P. 22-23.) The stub in the stock certificate book for the two certificates issued in the name of Mrs. Vreeland bears a receipt in the name of Mary A. Vreeland, the name actually being signed, however, by Mr. Vreeland. (P. 38.) The stock ledger kept at the Bank (P. 22) contains a page in the name of Mary A. Vreeland showing that on May 5, 1910, 15 shares were issued to her, and that on September 25, 1913, 100 shares were issued to her, making a total of 115 shares, (P. 60, Ex. 1.) A demand for the payment of the assessment upon 115 shares of stock shown by the stock ledger to stand in defendant's name was prepared and mailed to her. (P. 24-26; Ex. 8, P. 66 *et seq.*) Total payments on account of the assessment, aggregating $5,839.20 have been made, leaving a balance of principal of $5,660.80, which together with interest to the Dec. 21st, 1915, make a balance due of $6,594.13, the amount claimed. (P. 27.)

On September 2, 1913, a dividend of two and one-half per cent (2½%) was declared and ordered distributed on October 1, 1913. (P. 24.) The by-laws of the Bank, Section 18, provide that dividends shall be paid to the shareholder in whose name the stock shall stand at the declara-

tion of the dividend. (P. 35). The checks for the dividend payable October 1, were prepared some time prior thereto, and a check dated on October 1, drawn to the order of William H. Vreeland for Three hundred and twelve 50/100 dollars ($312.50), the dividend upon the 125 shares of stock standing in his name at the date of declaration, was delivered to him, endorsed by him, and by the defendant and deposited by her in her account in the Bank. (P. 23.)

The above constituted the case of the plaintiff

By way of defense, it was shown that on September 25, 1913, Mr. Vreeland was the owner of 125 shares of the stock of the Bank, upon which date he asked the president, Mr. Carragan, to make out two dividend checks, one to his order on 25 shares, and one to Mrs. Vreeland's order on 100 shares, (P. 36-40) so that he might give to Mrs. Vreeland as a present the dividend on the 100 shares of stock; that he was informed by Mr. Carragan that the checks had already been made up, and that the dividend could not be divided as requested (P. 36), but that if he would bring in certificates to the amount of 100 shares new certificates could be issued in Mrs. Vreeland's name so that the president would remember that she was to have the future dividends. Mr. Vreeland did, on that day, give to Mr. Carragan three certificates aggregating 100 shares, and received two certificates for the same amount in the name of Mrs. Vreeland (P. 36), and those certificates he retained until October 1 when he handed them to Mrs. Vreeland requesting her to endorse them back to him stating that he had made a mistake (P. 36). At the same time he gave to Mrs. Vreeland the dividend check which was subsequently

deposited by her. (P. 37.) Mrs. Vreeland did sign her name to the form of transfer on the back of the certificates and handed them to Mr. Vreeland by whom they were retained still standing in her name. (P. 37.)

Mr. Vreeland states that at the time the certificates in the name of Mrs. Vreeland were handed to him by Mr. Carragan he was told that it was necessary to have them registered if he wanted to give them to his wife, to which he replied that he did not want to give her the certificates, only the dividend on the shares. (P. 37). That he did not surrender the two certificates in the name of Mrs. Vreeland and have other certificates issued to him because he was told by the president that if he had not had the transfer to Mrs. Vreeland registered the stock was still in his name. (P. 39.) That during all of the time Mr. Vreeland was a vice-president and director of the Bank. (P. 41.)

Mrs. Vreeland testified that she was told on October 1, by her husband, that he had put some bank stock in her name and had made a mistake and wanted her to assign it in blank (P. 43). That complying with his request she did sign her name, but did not say anything about the transaction to any officer of the First National Bank of Bayonne after said date October 1, 1913 (P. 44).

After the demand for the payment of the assessment had been sent out, and on the day it was payable, June 13, 1914, Mr. Vreeland executed and delivered to the then receiver of the Bank, Mr. Shutts, a certain bond in the penalty of Twenty-five thousand dollars ($25,000) conditioned upon the payment of Twelve thousand

Five hundred dollars ($12,500) on September 14, 1914, the bond containing a provision:

> "This bond is given to secure the payment of an assessment upon 125 shares of the capital stock of The First National Bank of the City of Bayonne, a national banking association formed under the National Bank Act owned by William H. Vreeland."

which bond was secured by a mortgage upon two parcels of real estate, in which mortgage the defendant in this action joined (Ex. 2, P. 61).

On the same day Mrs. Vreeland and her husband executed their joint bond to the Receiver in the penal sum of Three thousand dollars ($3,000) conditioned upon the payment of Fifteen hundred dollars ($1500) on September 14, 1914, the bond containing a provision:

> "This bond is given to secure the payment of an assessment upon 15 shares of the capital stock of The First National Bank of the City of Bayonne, a national banking association formed under the National Bank Act owned by Mary A. Vreeland and William H. Vreeland,"

which bond was secured by a mortgage made by the defendant and her husband upon one parcel of real estate in Bayonne (Ex. 3, P. 61).

Separate suits were instituted to foreclose these two mortgages and the premises sold at a deficiency. Thereafter the Receiver of the Bank instituted an action against Mr. Vreeland to recover the deficiency upon the $12,500 bond, and a separate action against Mrs. Vreeland to recover the deficiency upon the $1500 bond. Before a judgment was entered against Mr. Vree-

land he was adjudged a bankrupt. The deficiency claimed in the action against Mrs. Vreeland, $388.92 and interest, was paid (P. 33). After the adjudication of Mr. Vreeland as a bankrupt, the present suit was brought to recover the balance remaining unpaid on the 100 shares of stock standing in defendant's name but admittedly owned by Mr. Vreeland (P. 34).

In the complaint in the action to recover the deficiency upon the larger bond, which action was brought against Mr. Vreeland only, it is alleged that at the time of the closing of the Bank he was the owner of 125 shares of the capital stock of the banking association, certificates for 25 shares thereof being registered in his name, and the remaining 100 shares registered in the name of Mary A. Vreeland, his wife (Ex. 3, P. 78).

Assignments of Error Relied Upon.

The appellant relies upon assignments numbered I to VI inclusive (P. 98-100).

I.

The United States Circuit Court of Appeals for the Third Circuit erred in affirming the judgment of the District Court of the United States for the District of New Jersey, entered on the 19th day of December, 1916, in favor of Mary A. Vreeland, the defendant in said cause, and against this plaintiff in error, the plaintiff therein.

II.

The said Circuit Court of Appeals erred in not reversing the said judgment.

III.

The United States District Court for the District of New Jersey erred in directing a verdict for the defendant.

IV.

The said Circuit Court of Appeals erred in affirming the action of said District Court in this regard.

V.

The said District Court erred in denying the motion made by counsel for the plaintiff in error for a verdict in favor of the plaintiff.

VI.

The said Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

POINT I.

The defendant was a record shareholder.

On Sept. 25, 1913, Mr. Vreeland surrendered certificates for 100 shares of his holdings and accepted new certificates for the same amount in Mrs. Vreeland's name. The old certificates were pasted in the stock book and marked cancelled

(Pr. 4, p. 22). The transfer as made was registered on all of the books kept by the bank for that purpose, to wit: on the stub of the stock certificate book (Ex. 4), on the stock ledger (Ex. 1) and on the list kept on the Assistant Cashier's desk (p. 25).

Section 5139 of the U. S. Revised Statutes provides:

> "The capital stock of such association shall be divided into shares of $100. each, and be deemed personal property, and be transferrable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder of such shares."

The provision in the by-laws applicable is found in Section 19 as follows:

> "Certificates of stock signed by the President and Cashier, registered by the Mechanics' Trust Company of New Jersey, may be issued to the shareholders, and the certificate shall state upon the face thereof that the stock is transferrable only upon the books of the bank, and when stock is transferred the certificates thereof shall be returned to the bank cancelled, preserved and new certificates issued" (p. 35).

The bank did all that was required of it to complete the transfer except to have the new certificates registered on the books kept by the Mechanics' Trust Company, the registrar. That was a mere irregularity or informality.

By delivering the stock to Mr. Vreeland with-

out the formality of registration the bank waived that act as a necessary part of a transfer.

In *National Bank* v. *Watsontown Bank* (105 U. S. 217), an action involving the title to certain shares of bank stock, the Court held:

> "All that is necessary, when the transfer is required by law to be made upon the books of the corporation, is that the fact should be appropriately recorded in some suitable register or stock list, or otherwise formally entered upon its books. For this purpose the account in a stock ledger, showing the names of the stockholders, the number and amount of the shares belonging to each, and the sources of their title, * * * is quite suitable, and fully meets the requirements of the law. * * * Nothing more remained to be done to make the conveyance of title complete and absolute, and, so far as the bank was concerned, it was irrevocable. It had consented to the transfer, and the transfer had been made."

See also *Harvey* vs. *Stowe*, 219 Fed. 17 (C. C. A. 9th Circuit).

The Banking Association treated Mrs. Vreeland as the owner of the shares; it held her out as the owner by keeping her name upon the stock ledger, and upon the list of shareholders required to be kept by Section 5210 U. S. R. S. (P. 25.) The certificate is not what the shareholder owns; it is merely evidence of an ownership of a stock interest. As against any contention of the bank, she was the owner.

POINT II.

The appellee is liable, as an owner, for the assessment.

Having shown the appellee to be a record stockholder, we have established a *prima facie* case. Having been met by the defense that she was not the actual owner, it is incumbent to trace to her some knowledge of the transfer.

Both the defendant and her husband testified that on October 1st, 1913, Mr. Vreeland presented the two certificates to her, at the same time saying that *he had put some bank stock in her name* and had made a mistake and *wanted her to assign it in blank*. And she did, admittedly, on October 1st, 1913, endorse her name upon the form of transfer on the back of the certificates. (Pp. 43, 40.)

We cannot concede that anyone could have any purpose in endorsing a form of transfer on the back of a stock certificate unless it were because the certificate stood in that person's name, and he knew it. The defendant admits that she was told that the bank stock had been put in her name by her husband, and that he wanted her to assign it in blank. She, therefore, is liable for the assessment.

Section 5151, U. S. R. S. provides:

> "The shareholders of every national banking association shall be held individually responsible equally and ratably, and not one for another, for all contracts, debts and engagements of such association to the extent of the amount of their stock therein at the par value thereof in addition to the amount invested in such shares."

In *Matteson* v. *Dent*, 176 U. S. 521, an action involving a stock assessment, the court held:

> "But the settled doctrine is that as a general rule the legal owner of stock of a national bank association—*that is, the one in whose name stock stands on the books of the association*—remains liable for an assessment so so long as the stock is allowed to stand in his name on the books, and consequently that although the registered owner may have made a transfer to another person unless it has been accompanied by a transfer on the books of registry of the association such a registered owner remains liable."

A situation similar to that presented on this appeal is not entirely new to this Honorable Court. In fact, it is our opinion that the questions have been decided. That decision is found in *Kenyon* vs. *Fowler*, 155 Fed. 107, affirmed in 215 U. S. 593. In that case the suit was by Fowler, the Receiver of a national bank, to recover an assessment upon 40 shares of the bank's stock, the defense being that the stock was issued and the defendant's name as owner entered upon the bank's books without his knowledge or consent. The stock ledger of the bank contained entries under date of December 11, 1903, showing that two certificates for 20 shares each in the name of one Bartels were surrendered, and two new certificates issued in the name of the defendant, the transfer being made at the request of one Reynolds, a broker, who received and receipted for the two certificates. Immediately upon receipt of the certificates he took them to the office of the defendant where he told defendant that the stock belonged to one Ratchford who wanted the stock put in the defendant's name, at the same time

saying, "Here are the certificates made out in your name", and asking him to assign them in blank, which was done. Immediately thereafter the certificates were delivered to Mr. Ratchford. The defendant testified that he first knew his name appeared on the books of the bank some time after the failure, that he never purchased nor authorized any person to purchase bank stock for him. His story of the interview was that the broker came to his office and said, "You are a stockholder of the bank; I have got the certificates here in your name and I wish you would assign them in blank"; that without looking at them he turned them bottom side up on his desk and endorsed them in blank. The Court held that that testimony established facts as follows:

> "First: The defendant's name appeared on the books of the bank as a stockholder, two certificates for 20 shares each having been issued in his name.
>
> Second: The defendant knew that the certificates were taken in his name, and he knew, or should have known, that his name appeared as a stockholder on the books of the bank.
>
> Third: In December, 1903, the defendant duly assigned the certificates in blank and has not seen them since.
>
> Fourth: Defendant made no effort to have his name removed from the books of the bank as a stockholder or to have the name of the legal owner of the certificates substituted.***
>
> It cannot be denied that the rule invoked by the plaintiff and followed by the Circuit Court, is a severe and drastic one imposing upon the stockholder the duty, after he has sold and assigned his stock, of seeing to it that his name is removed from the books of the bank. * * * We are constrained to hold under the authorities which must gov-

ern our action that the court below was right in directing a verdict for the plaintiff. Harsh as the rule may seem, it is clear that it is necessary for the speedy and efficient winding up by the Comptroller of the affairs of insolvent banks. He cannot enter upon an investigation and hear proofs pro and con to determine who are the stockholders, and the reasons are manifest and cogent for holding that in making his assessment he is justified in relying upon statements found in the books of the bank. They are at least *prima facie* evidence. There was nothing to indicate to the Comptroller that the defendant had parted with his stock, and the defendant, with full knowledge of the facts, not only failed to repudiate the action of Reynolds in having the shares taken in his name, but took no steps to have them registered in the name of the true owner. He cannot now as against creditors be permitted to dispute his liability."

By way of comparison, in the case just cited we have the true owner of stock having certificates issued in the name of the defendant without his knowledge or consent. In the case now under consideration we have Mr. Vreeland procuring the issuance of certificates representing 100 shares of stock in the name of Mrs. Vreeland without her knowledge or consent. In each case we have the name of the defendant appearing upon the stock books of the bank.

In the Kenyon case we have the broker informing the defendant that the stock had been issued in his name. In the case now under consideration we have Mr. Vreeland stating to his wife that he had put some bank stock in her name and had made a mistake. In each case we have the defendant endorsing the certificates in blank.

In the Kenyon case this Court held that the statement to Mr. Kenyon and his endorsement in blank were sufficient so that he knew or should have known that his name appeared as a stockholder on the books of the bank. In neither case did the defendant make any effort after the endorsement in blank to have his or her name removed from the books of the bank nor has he seen the certificate.

It seems to us that it makes no difference what the intention of the person having the transfer made may have been. The effect of his act is to place the name of some other person as a shareholder upon the records of the bank, thereby saying openly and publicly to all persons who may have future transactions with the bank that the transferee is a stockholder and that the creditors are entitled to rely upon that stockholder for the individual liability.

The affirmance of the Kenyon case by the Supreme Court was based upon *Keyser* vs. *Hitz*, 133 U. S. 138, wherein the action was to recover an assessment made by the comptroller on the stockholders of a national bank. The defendant pleaded that she never held or owned shares of stock, and that if her name appeared upon the books the entries were fraudulent. The facts established were that the stock ledger under date of January 21, 1876, showed an assignment and transfer to the defendant of 200 shares of stock from one Mattingly and others. The husband of the defendant was president of the bank and Mattingly one of the trustees. Checks for three dividends were drawn to the order of Mrs. Hitz some time after the transfer and by her endorsed to the order of her husband. The defendant in her testi-

mony was very explicit in saying that she never bought, owned or voted any stock in the bank, and never knew until after the failure that her name appeared as a stockholder on the books; that she knew nothing of the paper signed by stockholders of the savings bank authorizing the conversion into a national bank, and had no recollection of signing it although the signature resembled hers; that she could not say that the name appearing upon the dividend checks was in her handwriting; that she was sure she did not get any of the money on account of the checks and that she never had them in her possession. In writing the opinion of the court, Mr. Justice Harlan said:

> "It is true, as already suggested, there was evidence tending to show that the transfers of stock were made originally without defendant's knowledge, and the jury might reasonably have concluded under all the evidence that the transfers were made, and caused to be made, by her husband. But these facts neither proved, nor tended to prove, fraud upon the part of the husband. * * * *Besides, the intent with which the husband caused the transfers to be made to his wife was wholly immaterial.* * * * The vital question remained whether the defendant became the owner of the stock within the meaning of the statute regulating the individual liability of the shareholders of national banking associations. * * *
>
> If she became aware of the transfers, after they were made, and thereafter received the dividends, she became a shareholder for all purposes of individual liability in respect to the contracts, debts and engagements of the bank as fully as if the transfers had been made originally with her knowledge and consent. *Whether she received the dividends or not depended upon the inquiry as to whether*

the checks for them were endorsed by her. If she endorsed them, or either of them, she is estopped to say that she did not know their contents and was not the owner of the shares of stock upon which the dividends were declared, for each check discloses upon its face that it was payable to her order, and was for dividends on stock standing in her name on the books of the bank. * * *

We must not be understood as saying that the mere transfer of the stocks on the books of the bank to the name of the defendant imposed upon her the individual liability attached by law to the position of shareholder in a national banking association. If the transfers were, in fact, without her knowledge or consent, and she was not informed of what was so done, nothing more appearing, she would not be held to have assumed or incurred liability for the debts, contracts and engagements of the bank. But, if after the transfers she joined in the application to convert the savings bank into a national bank, *or in any other mode approved, ratified or acquiesced in such transfers,* or accepted any of the benefits arising from the ownership of the stock thus put in her name on the books of the bank, she was liable to be treated as a shareholder with such responsibility as the law imposes upon the shareholders of national banks."

In the case just cited, apparently all that the defendant did was to write her name upon certain papers, to wit, the application for the conversion of a savings bank, and upon three dividend checks, *without at the time knowing what the papers were, nor at the time of the trial recollecting the transaction in any way.*

In the case now under consideration the defendant wrote her name on the back of two papers, to wit, the two certificates, which were nothing

more nor less than the evidence of her ownership of the stock as recorded upon the books of the bank, and at the time of such endorsement she was told by her husband that the bank stock was in her name and that he wanted them (the certificates) endorsed in blank.

We submit that these facts clearly establish actual knowledge on the part of the defendant that the stock was in her name; that she acquiesced in the transfer made September 25, 1913, and that on October 1, 1913, she ratified the act of her husband in placing the stock in her name by, without question, signing the certificates of transfer so that her husband might have the stock retransferred to himself. We submit that when she performed this act she was then charged with the duty, as was said by this court in Kenyon *vs.* Fowler, to see that her name was removed from the books of the bank.

The only dividend which was actually paid after the transfer to Mrs. Vreeland was by check dated October 1, 1913, actually drawn prior to the date of the transfer, and pursuant to a resolution passed by the board of directors September 2, 1913, more than three weeks prior to the transfer, and at a time when the bylaws provided that the dividends were payable to the stockholders of record as of the date of the declaration of the dividend. Mrs. Vreeland, therefore, was not entitled to have the dividend check drawn to her order. As a fact, she did receive the full dividend on the 100 shares of stock transferred to her.

The situation is fairly summed up in the answer of the defendant which she has verified, wherein she says:

> "That on October 1, 1913, said William H. Vreeland received the said dividend on the

said 125 shares of the capital stock of the said banking association and gave said dividend to the defendant, and at the same time he informed the defendant that the certificates for 100 shares of the said capital stock of the said banking association had been made out in her name and requested the defendant to assign said certificates for 100 shares back to the said William H. Vreeland, and the said defendant forthwith assigned said certificates for 100 shares to the said William H. Vreeland. That the defendant did not know that the certificates for 100 shares of the capital stock had been placed in her name until October 1, 1913, when she assigned the said certificates to the said William H. Vreeland'' (P. 8).

We submit that the situation in this case is fully covered by the cases already cited, and were it not for the fact that the question involved is one of great importance, in that it involves the right of creditors of national banks throughout this country to rely upon the stock books of the bank, we should rest content without further discussion. Let us therefore examine the cases cited by the learned Circuit Court of Appeals upon which they rely in distinguishing this case from the cases cited. The case of *Keyser* vs. *Hitz*, 133 U. S. 138, is distinguished from the case at bar by reason of the fact that, in the former case, knowledge was imputed to the defendant by reason of her act in joining in an application to convert the savings bank into a national bank and by accepting checks for dividends on the stock drawn to her order and by her endorsed. Having accepted the benefits arising from her stock ownership defendant was estopped from denying her liability. The facts as to the actual knowledge

of the defendant in these two cases are almost identical. Mrs. Hitz testified 133 U. S. pp. 142-3 in part as follows:

> "Q. What do you say as to the signature—did you write it? A. I cannot say. Q. Did you ever get any money on account of those checks? A. I never did. Q. Those checks appear to have been paid. Do you remember whether you ever had them in your possession or not? A. No, sir, I never had them in my possession. Q. What do you say? A. I am certain I never had them in my possession. Q. Can you account to the jury for the similarity of that signature to your own? A. I cannot. Q. Do you say you never wrote your name on the back of these checks? A. No, sir: I cannot say that. I have no recollection of having done so. I never did so knowing the nature of the checks; never did so at all, so far as I can recollect."

Mrs. Vreeland testified (P. 43, 44) as follows:

> "I first saw these certificates the day Mr. Vreeland brought them to me to have them signed on the first day of October, 1913. Mr. Vreeland came to me and asked me if I would sign these papers. I said, 'What are they?' He said 'Some bank stock in which I have made a mistake. I said, 'Yes', and I immediately signed them that is all." * * *
>
> "Mr. Vreeland told me that he put some bank stock in my name and had made a mistake and wanted me to assign it in blank. He merely said 'May, will you sign these papers for me?' I said, 'What are they?' He said 'They are some bank stock, I have made a mistake.' I didn't know that the certificates were in my name; I didn't know anything about them; didn't think anything about them."

If knowledge was imputed to the defendant in the former case, she having no recollection whatever of any of the acts alleged, and the money concededly going to the credit of her husband, is the question of knowledge not so much stronger in the case of Mrs. Vreeland, the defendant in the present action, who was informed by her husband that the stock had been put in her name, that he had made a mistake, that he wished her to sign. What other inference could possibly be drawn than that the stock was in defendant's name, and that her signature was necessary to transfer ownership from herself back to her husband?

In the case of *Glenn* vs. *Garth*, 133 N. Y. 18, erroneously printed 459, where action was brought to recover the balance of the subscription price upon shares of stock of a transportation company, the defendants were stock brokers and upon the request of one Ficklin they purchased stock for him knowing that the balance of the subscription price was assessable at any time, and both parties contemplating an ownership by the customer and a lien or hypothecation as the interest of the broker. There was not pretense that any direction or authority was given by anyone to cause the stock to be transferred upon the books of the company as it was purchased. McKim, who acted for the brokers in buying the stock, caused the same as purchased to be transferred to the defendants. The Court says:

> "His (McKim's) act did not make the defendants stockholders. He was not empowered to make any such contract or establish any such relation, and could not impose it upon them by an act which was in no sense theirs. The defendants could only become responsible for it by estoppel or ratification.

* * * When the certificate reached them (defendants) they discovered McKim's mistake. Garth wrote to him repudiating the transfer and denying his authority to make it, and directing him, as a means of undoing the mischief, to sell and transfer the whole four hundred and ninety shares. To enable him to do so, in accordance with established forms, the defendants signed and executed an assignment in blank of the stock transferable by delivery and McKim sold it, but it was not transferred upon the corporate books. Before that could have been done, or at all events before it was done, the corporation failed and made a general assignment. * * * *

That payment was a confirmation of the authorized purchase, but not a ratification of the unauthorized act which followed it. That was repudiated at the very time of the payment and consistently with it, both to McKim the broker and Ficklin the general owner.

But greater reliance is placed upon the action which followed. As has been explained, the defendants instead of returning the certificates to McKim *with a demand that their form be changed, assigned them in blank and required him to sell them. Unexplained, the act recognized an ownership and the existing transfer to the defendants, and was imprudent exactly for that reason.*"

Right there is the real distinguishing feature from the case now under consideration. It was there held that an unexplained endorsement of the certificates in blank recognized an ownership. The defendant in the case now under consideration makes no explanation except that she signed her name on the back of the stock because she was so requested by her husband.

In the Glenn case, the court continued:

> "Neither the company nor any of its creditors did anything or forbore anything upon the faith or because of the appearance of ownership in the defendants. * * *
>
> For what is ratification where no rights of third persons are involved? * * * In this case we know that the intention was to disaffirm and repudiate the apparent contract-relation seemingly established by the mistaken action of McKim, and that the assignment in blank for the purposes of sale was not meant to affirm the apparent ownership, but to transfer the formal legal title put in the defendants against their will."

There is another clear distinguishing feature. In the present case the defendant's husband, realizing that the apparent title to his securities was out of his name, told Mrs. Vreeland that he had made a mistake and wanted her to endorse those certificates back to him. In other words, he wanted to be put in a position where he could have the stock retransferred to him, and he so told her in substance, and her act in endorsing the certificates without question or criticism was not a disavowal, but an admission and consent to a retransfer to her husband at his pleasure.

We also have in this case the rights of creditors intervening which the court has specifically said was not involved in the Glenn case.

The name of the defendant appeared on the books of the bank as a stockholder of record from September 25, 1913, until the closing of the bank December 6, 1913, and during all of that time, not only were the creditors entitled to rely upon Mrs. Vreeland as a stockholder for her individ-

ual liability in case of failure, but they are presumed to have so relied.

See Hood *v.* Wallace (89 Fed. 11, aff. 97 Fed. 983 and 182 U. S. 555).

Do we find that Mrs. Vreeland asked her husband to have the stock transferred from her name, or that she asked him to sell it and have new certificates issued, or that she in any way repudiated his action in having the stock transferred to her? Indeed, there is no suggestion in the record that she did any of those things. All she did was to blindly endorse the certificates in blank, which the court, in the Glenn case, held recognized an ownership and the existing transfer.

Likewise, there is no statute governing a transportation company, such as we find in the banking law providing that creditors are entitled to rely upon a full paid capital stock, together with an individual liability upon shareholders to the par value of their shares.

We submit, therefore, that we have established that Mrs. Vreeland was a record owner of the stock, a fact which she not only actually knew, but concerning which she had performed an act charging her with knowledge, and that her liability as such shareholder is not only established by the cases heretofore cited, but also by the language in *Scott* vs. *Deweese,* 181 U. S. 202, as follows:

> "If the subscriber became a shareholder in consequence of frauds practised upon him by others, whether they be officers of the bank or officers of the Government, he must look to them for such redress as the law authorizes, and is estopped, as against creditors, to deny that he is a shareholder within the

meaning of Section 5151, if at the time the rights of creditors accrued, he occupied and was accorded the rights appertaining to that position."

POINT III.

The acceptance of the bond and mortgage of William H. Vreeland as collateral security for the payment of the assessment was not a waiver of the right to recover of Mrs. Vreeland.

The Circuit Court of Appeals as did the trial court, found it unnecessary to consider the question as to the release of defendant's liability because demand for the assessment had been made upon the husband. Should the Court find, in line with the cases of Keyser *v.* Hitz and Kenyon *v.* Fowler, supra, that the defendant, was as far as the rights of creditors are concerned, the lawful owner of record, liable for the assessment,—this question may come up for consideration. We therefore present for the attention of the Court the following:

The actual owner of stock in a national bank is liable for an assessment even though the stock is not registered in his name, (*Pauly* vs. *State Loan & Trust Co.* 165 U. S. 606) and a receiver is entitled to a recovery against either the actual owner or the record owner. (*Hubble* vs. *Houghton*, 86 Fed. 547, affirmed 91 Fed. 453—C. C. A. 1st Cir.)

When the assessment became due and payable on June 13, 1914, neither Mr. nor Mrs. Vreeland was in a position to pay the assessment upon the full 140 shares of stock standing in their names.

The only information in the hands of the Receiver was contained in the stock books of the bank. Those books disclosed that Mrs. Vreeland was liable for the assessment upon 115 shares of stock, and that Mr. Vreeland was liable upon 25 shares. In order that the time of payment of the assessment might be postponed the Receiver was handed two bonds secured by mortgages upon real property. What the conversations were leading up to the delivery of those contracts is immaterial, and we submit that the Court erred in accepting the testimony found at page 38, and which forms the basis of the third assignment of error. Mr. Vreeland by the delivery of his individual bond placed in the hands of the Receiver an admission of liability for an assessment, not only upon 25 shares of stock registered in his name, but also upon the 100 shares standing in the name of Mrs. Vreeland. The Receiver, in accepting such a bond with such a recital and admission, and in granting an extension of time for the payment of the assessment, took a double precaution. He put himself in a position where the assessment could be legally enforced against either Mrs. Vreeland, as the record owner, or Mr. Vreeland, as the actual owner.

We must look at the bond and mortgage itself for the terms of the contract. They say they are given to secure payment. They could not be accepted in payment because the Receiver had no authority so to compound.

Section 5234 U. S. R. S. provides:

> "Such Receiver, under the direction of the Comptroller, shall take possession of the books, records and assets of every description of such association, collect all debts, dues and claims belonging to it, and upon the order of a court of record of competent jurisdiction may sell or compound all bad or doubtful debts."

No such authorization from the court is set forth, and in fact in *In Re California National Bank*, 53 Fed. 38, the Court said:

> "It is, however, to say the least, extremely doubtful whether the court has the power to authorize the compounding of the statutory liability of a stockholder in a national bank. * * * It is by no means clear that the statutory liability of the stockholders is a debt within the meaning of the clause authorizing the court to sanction compounding of all bad or doubtful debts."

See also *Price* vs. *Yates*, 19 Fed. Cases, 1322.

The Receiver, therefore, instead of even attempting to release a claim which the books showed he had, and which he was bound to enforce, was merely obtaining an admission on the part of another individual that he also was liable for the same assessment. The Receiver then had two individuals to whom he might look instead of one.

Briefly summarized, the defendant appellee was informed that bank stock had been placed in her name; she wrote her name on the back of the certificate, yet she took no step to see that her name was removed from the books.

LAST POINT.

It is respectfully submitted that the Court should have found as a matter of law that the defendant was a stockholder of record liable for the assessment under §5151 U. S. R. S. It is respectfully submitted that the judgment appealed from should be reversed and a judgment directed for the appellant.

BARBER, WATSON & GIBBONEY,
Solicitors for Plaintiff-in-error.

STUART G. GIBBONEY,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1918
No. 318

CHRISTOPHER L. WILLIAMS, Receiver of the First National Bank of Bayonne

Plaintiff-in-Error

vs.

MARY A. VREELAND

Defendant-in-Error

In Error to the United States Circuit Court of Appeals for the Third Circuit

BRIEF FOR DEFENDANT-IN-ERROR

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[illegible]
—1919—

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1918—No. 318.

CHRISTOPHER L. WILLIAMS, receiver of the First National Bank of Bayonne, *Plaintiff-in-error,* v. MARY A. VREELAND, *Defendant-in-error.*	On Error.

BRIEF FOR DEFENDANT-IN-ERROR

Statement of the Case.

The plaintiff seeks to recover the balance due upon an assessment made against the defendant as a stockholder of the First National Bank of Bayonne.

The sole question involved is whether Mrs. Vreeland was a shareholder of the bank at the time of its closing in December, 1913.

In dealing with this question it is important to bear in mind the following facts. William H. Vreeland, the husband of the defendant, was the owner of 125 shares of stock of the First National Bank of Bayonne on Sept. 25, 1913 (Record, page 20). On that date, he requested the president of the bank to make two dividend checks, one to cover the dividend on 100 shares. And the other to cover the dividend on 25 shares. He stated to the president that he wanted to make his wife a present of the dividend on the 100 shares. The president stated that he could not

do so for the reason that a check for the whole amount had already been made out in the name of William H. Vreeland, and then suggested that the certificate for 100 shares be put in the name of the wife (Record, page 20). On that day or the following day, Vreeland presented the old certificates owned by him to the president of the bank, and had new certificates made out in the name of his wife. The president then said it was necessary to have the certificates registered if he wanted to give the stock to his wife. Vreeland denied that he desired to give the stock to his wife but that he wished to give her only the dividend on the 100 shares. Vreeland then said that he would have the stock endorsed back to him (Record, page 21), and on the 1st day of October, he presented the certificates to Mrs. Vreeland and asked her to sign her name on the back for the reason he had made a mistake in having the certificates issued in her name. Prior to that time, he did not have any conversation with her in reference to the stock (Record, page 21). When the new certificates were issued in her name, Vreeland signed his wife's name on the stubs.

On October 1st, he handed his wife the dividend check (Exhibit 5), which check was drawn to the order of William H. Vreeland for $312.50 and across the face was marked the words "dividend check". He did not tell her anything about where it came from, nor did he say she would get any future dividends (Record, page 22). After obtaining the signature of Mrs. Vreeland, Vreeland kept these certificates in his possession (Record, page 22).

Brief of the Argument.

POINT I.

The defendant was not a shareholder and liable for the assessment.

In the first place, to make a person liable, under Section 5151 of the U. S. Revised Statutes, it is necessary that such person against whom the assessment is sought to be recovered is a shareholder.

Under Sec. 5139 of the U. S. Revised Statutes, the capital stock of a national banking association is "transferrable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall in proportion to his shares succeed to all rights and liabilities of a prior holder of such shares." Were the shares issued in the name of the defendant transferred on the books of the association in the manner prescribed in the by-laws? The by-laws provide "The stock of this bank shall be assignable and transferable only on the books of this bank subject to the restrictions and provisions of the National Banking Law." Again, certificates of stock, signed by the president and cashier and registered by the Mechanics Trust Co. of New Jersey, may be issued to shareholders, and the certificate shall state upon the face thereof that the stock is transferable only upon the books of the bank; and when stock is transferred, the certificates thereof shall be returned to the bank, cancelled, preserved, and new certificates issued (Record, page 19 and Exhibit P. 9).

It is uncontradicted that the certificates issued in the name of Mrs. Vreeland (Plaintiff's Exhibits 6 and 7 and Defendant's Exhibit 4) were

not registered by the Mechanic's Trust. The by-laws provide for a registrar and also the registering of certificates of stock. The certificates provide that the same are not valid until countersigned by the registrar (Plaintiff's Exhibit 6, Record, page 37, Plaintiff's Exhibit 7, page 38). Under Section 5139 above mentioned, no person becomes a shareholder except by a transfer of the stock in the manner prescribed in the by-laws. Until the transfer is made in that manner, the prior holder is the stockholder for all the purposes of the law.

Richmond v. Irons, 121 U. S., 27-66.

The mere transfer of stock on the books of the bank is not sufficient to impose the liability attached by law to a shareholder in a national banking association.

Keyser v. Hitz, 133 U. S., 138.

Conceding for the purpose of argument that the transfer of the stock in question was made in strict conformity to the National Banking Act and the by-laws of the bank, nevertheless the defendant cannot be held responsible as owner of the stock. In *Pauly v. State Loan and Trust Co.,* 165 U. S., 606-612, the court said:

> "And, let it be observed, the liability upon shareholders is to the extent of the amount of their stock at the par value thereof, 'in addition to the amount *invested* in such shares. The word 'invested' plainly has reference to those who originally or by subsequent purchase become the real owners of the stock, and cannot refer to those who never invested money in the shares, but only received the certificates of stock, or it may be the legal title thereto, as collateral security for debts or obligations, already or to be contracted
> * * *.

> "The object of the statute is not to be defeated by the mere forms of transactions between shareholders and their creditors. The courts will look at the relations of parties as they actually are, or as, by reason of their conduct, they must be assumed to be for the protection of creditors. Congress did not say that those only should be regarded as shareholders, liable for the contracts, debts and engagements of the banking association, whose names appear on the stock list distinctly as shareholders. A mistake or error in keeping the official list of shareholders would not prevent creditors from holding liable all who were, in fact, the real owners of the stock, and as such had invested money in the shares of the association. As already indicated, those may be treated as shareholders, within the meaning of Section 5151, who are the real owners of the stock, or who hold themselves out, or allow themselves to be held out, as owners in such way and under such circumstances as, upon principles of fair dealing, will estop them as against creditors, from claiming that they were not, in fact, owners."

In order to hold the defendant, it is necessary to show, first, that her name appears on the books of the bank as a shareholder, and secondly, that the transfer of the stock was made with her knowledge or consent, or that she approved, ratified or acquiesced in such transfer, or accepted benefits arising by reason of such transfer.

Keyser v. Hitz, supra.

The first proposition has been considered. As to the second, the evidence clearly shows that the stock was placed in her name without her knowledge or consent and at no time thereafter did she in any manner approve, ratify or acquiesce in such transfer, nor was she the recipient of any benefits by reason of such transfer, nor at any

time did she hold herself out or allow herself to be held out as owner in any way or under any circumstances, so as to estop her from claiming she was not the owner. The husband owned the stock on Sept. 25, 1913, at which time or the day after he had new certificates made out in the name of the defendant (Record, page 21). The defendant was not informed of this transfer until October 1, following (Record, page 21). In the meantime, realizing that he had given away securities (Record, page 23), he determined to have his wife endorse back the certificates to him. At the time he presented the certificates to Mrs. Vreeland, he asked her to sign her name on the back because he had made a mistake (Record, page 21). He said: "Put your name on the back of these as I have made a mistake, that is about all the conversation I had" (Record, page 22). Mrs. Vreeland testified the first she saw the certificates was on the 1st day of October, 1913. She testified, "Mr. Vreeland came to me and asked me if I would sign these papers. I said, What are they? He said, Some bank stock in which I had made a mistake" (Record, p. 24). She did not know that the stock was in her name, nor did she authorize, direct or suggest to Mr. Vreeland or anyone else to purchase the stock of the First National Bank (Record, page 24). At the time the dividend check was delivered, Vreeland did not say anything to his wife about it being a present of the dividend from the First National Bank (Record, page 24). She also testified, in response to questions of the Court, that at the time Mr. Vreeland spoke to her he merely said, "May, will you sign these papers for me, I said, What are they? He said, They are some bank stock in which I have made a mistake" (Record, page 24). She did not know the

certificates were in her name, did not know anything about the certificates. He did not mention the name of any bank nor did he say that the stock was in her name (Record, page 24). From these facts it is apparent that the transfer was made without the defendant's knowledge or consent and that at no time after the transfer did she in any manner approve, ratify, or acquiesce in the transfer; nor did she at any time thereafter receive any benefits from such transfer.

In *Keyser v. Hitz*, supra, the books of the bank showed a legal transfer of the stock to the defendant. It was also shown that the defendant received the 4th, 5th and 6th dividends on the stock and that the checks in payment of the dividends were made out to her order and contained these words, "Paid to Jane C. Hitz, or order, $800. 4th dividend payable this day on stock standing in her name on the books of this bank and charged to dividend account No. 3300." The Court said:

> "If she became aware of the transfers after they were made, and thereafter received the dividends, she became a shareholder for all purposes of individual liability in respect to the contracts, debts and engagements of the bank, as fully as though the transfers had been made originally with her knowledge and consent. Whether she received the dividends or not depended on the inquiry as to whether the checks for them were endorsed by her. If she endorsed them or either of them she is estopped to say that she did not know their contents and was not the owner of the shares of stock upon which the dividends were declared; for each check discloses upon its face that it was payable to her order and was for dividends of stock standing in her name on the books of the bank."

The dividend check in this case was made out to the order of William H. Vreeland and there was nothing thereon to indicate that the stock on which the dividend was paid was standing in her name. On the other hand, the face of the check indicated that it was a dividend on stock owned by Vreeland himself. This check was delivered to Vreeland and, as stated by the court in the *Keyser* case, supra, "The mode in which he disposed of the proceeds is of no consequence in the present suit". In other words, Mr. Vreeland having personally received the check for the dividend, it made no difference whether the check or money was delivered to Mrs. Vreeland or to any other person.

The questions involved in this case are not similar to those decided in the case of *Kenyon v. Fowler,* 155 Fed., 107, affirmed in 215 U. S., 593. In that case the facts indicated that 20 shares of stock of the American Exchange National Bank was transferred on Dec. 11, 1903, from the name of one Bartels to Kenyon. The transfer was made by a broker who received the new certificates and went to the office of Kenyon and told him that the stock had been put in his name and then asked him to assign them in blank. Kenyon himself testified that he was told that he was a stockholder of the bank and that the certificates were presented to him and assigned in blank. Immediately after the stock was transferred, Kenyon was told that a man named Ratchford wanted the stock in his (Kenyon's) name, and the certificates were shown to him. He evidently wanted to accommodate Ratchford and made no objection to the use of his name. The stock was legally transferred on the record, delivered to Kenyon; he was told why the stock was placed in his name,

he acquiesced to the transfer, and therefore he was a bona fide stockholder.

In the present case, the transfer was made without the defendant's knowledge or consent. This fact is undisputed. She was not advised that she was a stockholder, but was told a mistake had been made. That was all the information she possessed when her name was placed on the back of the certificate.

In the *Kenyon* case, Judge Cox cited the case of *Glenn v. Garth,* 133 N. Y., 18, in which the court said:

> "It is insisted that we have violated the rule that one who authorizes and permits a transfer to himself of shares of stock upon the books of a corporation must be held to be a stockholder, whether in truth the real owner or not when the rights of corporate creditors are involved and is equitably estopped from denying the apparent relation. I admit the rule and have nowhere doubted or denied it."

It then appears that the defendant was released because the facts indicated the transfer to him on the books was a mistake which he immediately repudiated and sought to undo. That is exactly what was done in this case. A mistake was not made by the defendant but by Mr. Vreeland, and as soon as he (Vreeland) realized the situation and informed his wife of the mistake, she immediately endeavored to repudiate the transaction and undo the mistake by signing her name on the back of the certificate.

The burden no doubt was upon the defendant to show that she was not a shareholder. *Finn v. Brown,* 142 U. S., 56. She has borne this burden by proving that at no time did she authorize the transfer of the stock to her name, nor did she

acquiesce or ratify the transfer. A mistake was made by her husband and she so informed. The mere fact that she signed a blank power of attorney was not a ratification of the unauthorized act; it was the only means by which a mistake could be corrected. If plaintiff's contention is correct, a grave responsibility rests upon one in whose name stock is transferred either designedly or by mistake. If, when informed that stock has been transferred to his name, he refuses to sign a power of attorney permitting a re-transfer of the stock, he would be held liable for not making some effort to get the stock out of his name. On the other hand, if he does sign a power of attorney, he would also be liable for ratifying the transfer.

POINT II.

The admission of conversation relating to bond and mortgage of William H. Vreeland not error.

We are at loss to understand the objection to the testimony relating to the bonds (Exhibit P-2 and Exhibit P-3). When the question was asked, counsel for the plaintiff said "I object to that." This objection is not sufficient to apprise either the Court or counsel for the defense of the precise objection intended to be made. In *Donnelly v. State,* 26 N. J. Law, 463-511, the Court said:

> "A party who objects to evidence should state specifically the grounds of his objection, it is not sufficient to object generally that the evidence is illegal or that the witness is incompetent. The party objecting must put his finger on the very point to apprise the Court and his adversary of the precise objection he intends to make. Quoting *Elwood v. Diefendorf,* 5 Barb. S. C. R., 398."

This point in the above case has been repeatedly sustained in New Jersey, and in the recent case of *Webster v. Freeholder,* 86 N. J. L., 256, the Court said:

> "It is quite plain therefore, that the fundamental rules of review on error that there must be a ruling, that it must be adverse and that the trial court through the instrumentality of a formal challenge have an opportunity to reconsider and modify or change it, have not been nullified or emasculated by anything contained in the new Practice Act or the rules made in pursuance thereof."

At the time the question was asked, the plaintiff had put in evidence a bond dated June 13, 1914, made by William H. Vreeland to Frank B. Shutts, Receiver, (Exhibit P-2) and a bond dated June 13, 1914, made by Mary A. Vreeland and William H. Vreeland to Frank B. Shutts, Receiver (Exhibit P-3). One of these bonds was given to secure the payment of the assessment upon 125 shares of stock of the bank, and the other to secure the payment upon the assessment on 15 shares of stock. It was proper for the Receiver to look to Vreeland for payment of the assessment and it was also proper for Vreeland to assume that liability. If there was doubt in the mind of the Receiver of Mrs. Vreeland's inability to pay an assessment on 100 shares of stock, he had a right under Section 5234 of the U. S. Revised Statutes to secure the debt by accepting Vreeland's bond. The fact that he did not later secure an order of the Court to enter into such arrangement does not affect the admissibility of the conversation leading up to the delivery of the bonds in question.

POINT III.

Sufficient evidence having been produced to support the findings of the court below, the judgment should be sustained.

It is conceded there is no disputed question of fact (record, page 27). Both parties requested the court to direct a verdict. It has been held in this court that this action on the part of counsel "was necessarily a request that the court find the facts, and the parties are, therefore, concluded by the findings made by the court upon which the resulting instruction of law was given."

Beutell vs. Magone, 157 U. S. 154.

The proof before the court supports the findings. The plaintiff-in-error is, therefore, bound by this finding as effectually as if the case had been submitted to the jury and the same facts had been found by the jury.

For the reasons stated the judgment should be affirmed.

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WILLIAMS, AS RECEIVER OF THE FIRST NATIONAL BANK OF BAYONNE, NEW JERSEY, *v.* VREELAND.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 318. Submitted April 23, 1919.—Decided June 2, 1919.

Where both parties without more request a peremptory instruction, they thereby assume the facts to be undisputed and, in effect, submit to the trial judge the determination of the inferences proper to be drawn from them; and his finding must stand upon review, if supported by proper evidence. P. 298.

A husband, without his wife's knowledge or consent, caused shares of a national bank to be issued and entered on its books in her name, and afterwards, telling her that it was a mistake, induced her to indorse them for transfer, in blank, to correct the supposed error, and with no intention to ratify, affirm or acquiesce in his unauthorized act. *Held*, that the facts could be shown, and that the wife was not liable to assessment although the shares remained in her name on the books when the bank failed. *Id.*

Approval, ratification and acquiescence all presuppose the existence of some actual knowledge of the prior action and what amounts to a purpose to abide by it. P. 299.

244 Fed. Rep. 346, affirmed.

THE case is stated in the opinion.

Mr. Stuart G. Gibboney for plaintiff in error.

Mr. Pierre P. Garven for defendant in error.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

Williams, as receiver, sued defendant in error in the United States District Court for New Jersey to enforce

an assessment against her levied by the Comptroller of the Currency (§ 5151, Rev. Stats.) because she apparently owned certain stock of the First National Bank when it failed, December 6, 1913. She admits that the certificates were made out in her name and at time of the failure were so entered on the bank books. But she claims that, without her knowledge or consent, her husband caused them to be thus issued and entered. And further, that although she signed blank powers of attorney endorsed thereon and thereby made it possible to transfer the stock from her name, she never really approved, ratified or acquiesced in the transfer to herself.

Each side asked for an instructed verdict without more; the trial judge directed one in favor of Mrs. Vreeland, and in support of this action said—"Although the burden was upon the defendant to show that she was not in fact the owner of the stock, (*Finn* v. *Brown*, 142 U. S. 56, 67), I think that she has borne the burden by proving that the placing of the stock in her name in the first instance was unauthorized—without her knowledge and consent—and that she did not thereafter acquiesce in this act or in any way ratify it. . . . I am constrained to hold, therefore, that the defendant is not liable and that a verdict should be directed in her favor." Final judgment entered upon the consequent verdict was approved by the Circuit Court of Appeals. 244 Fed. Rep. 346.

In respect of the evidence and its conclusions therefrom the latter court said:

"The plaintiff proved that the defendant was a shareholder of record and that she did nothing to remove her name as such. This was sufficient to establish prima facie the defendant's liability. *Finn* v. *Brown*, 142 U. S. 56, 57; *Matteson* v. *Dent*, 176 U. S. 521, 530. The burden then shifted to her (*Finn* v. *Brown*, *supra*) to show that the act of making her a shareholder was in the first in-

stance unauthorized; that it was without her knowledge or consent; and that she has not since acquiesced in or ratified it. That she has sustained the burden upon the first two points is not disputed; therefore the remaining question is as to evidence of her ratification. . . . Considering this testimony in connection with corroborating testimony, it appears to us, that what Mary A. Vreeland did, in legal effect, was to make a valid execution of a power of attorney for the transfer of stock. That act, in so far as it authorized a transfer of stock, she cannot avoid by pleading ignorance. As the question here does not involve the validity of the act to effect a transfer, but concerns its evidential imputation of the knowledge with which it was done, we are of opinion that the circumstances which attended the act were a part of it and affected the evidential inferences to be drawn from it. These circumstances show, that before acting, the defendant requested to be informed as to what she was asked to do; this information was denied her. It was denied her under representations and influences, which, when she acted, led her to believe she was doing something entirely different from that which she was actually doing; that is, she was made to believe she was correcting a mistake of her husband, a mistake affecting his affairs, not that she was dealing with or assigning away her own property. Therefore, we think the circumstances were such as to negative the knowledge, which otherwise it is presumed her act would have imparted. They contradicted the normal imputations of her act, and left her without that knowledge which was a prerequisite to a valid ratification of her husband's unauthorized act."

It further held—

"Instead of submitting the case to the jury, however, each party asked the court for binding instructions in his favor, which, under *Beuttell* v. *Magone*, 157 U. S. 154, is not a submission to the court without the intervention

of a jury, within the intent of Rev. Stat., §§ 649, 700, but is equivalent to a joint request for a finding of fact by the court, and when the court, acting upon such request, directs the jury to find for one of the parties, both are concluded on its finding. In this case the parties submitted to the court the question of the wife's ratification of her husband's unauthorized act; that question was one of fact; upon it depended her liability. The court's decision, as evidenced by its instruction to the jury that they render a verdict for the defendant, was a finding of fact, which concluded both parties as effectually as if the same fact had been found by the jury."

The established rule is, "Where both parties request a peremptory instruction and do nothing more they thereby assume the facts to be undisputed and, in effect, submit to the trial judge the determination of the inferences proper to be drawn therefrom." And upon review, a finding of fact by the trial court under such circumstances must stand if the record discloses substantial evidence to support it. *Anderson* v. *Messenger*, 158 Fed. Rep. 250, 253; *Beuttell* v. *Magone*, *supra*, 157; *Empire State Cattle Co.* v. *Atchison, Topeka & Santa Fe Ry. Co.*, 210 U. S. 1, 8; *Sena* v. *American Turquoise Co.*, 220 U. S. 497, 501; *American National Bank* v. *Miller*, 229 U. S. 517, 520; *Mead* v. *Chesbrough Bldg. Co.*, 151 Fed. Rep. 998, 1002; *American National Bank* v. *Miller*, 185 Fed. Rep. 338, 341.

Counsel for the receiver maintained that, when Mrs. Vreeland endorsed the certificates in blank at the request of her husband who declared this necessary to enable him to correct his mistake, she thereby indisputably ratified his unauthorized transfer of the stock to her and assumed the duty promptly to remove her name from the bank books or suffer the liability imposed upon duly registered shareholders. But we think the courts below rightly held that facts and circumstances concerning this endorsement could be shown in order to negative the inference which

would have followed if unexplained. *Glenn* v. *Garth*, 133 N. Y. 18, 36, 37. And as without doubt there is substantial evidence tending to show she had no actual intention to ratify, affirm or acquiesce in her husband's unauthorized act, we must accept that as finally established.

In *Keyser* v. *Hitz*, 133 U. S. 138, which involved the liability of a married woman for an assessment levied against national bank stockholders, speaking through Mr. Justice Harlan, this court approved a charge—"If the stock in controversy was transferred upon the books of the German-American Savings Bank to and in the name of the defendant without her knowledge and consent, she was entitled to a verdict, unless she subsequently ratified and confirmed such transfer." And it was further said—"We must not be understood as saying that the *mere* transfer of the stocks on the books of the bank, to the name of the defendant, imposed upon her the individual liability attached by law to the position of shareholder in a national banking association. If the transfers were, in fact, without her knowledge and consent, and she was not informed of what was so done—nothing more appearing—she would not be held to have assumed or incurred liability for the debts, contracts and engagements of the bank. But if, after the transfers, she joined in the application to convert the savings bank into a national bank, or in any other mode approved, ratified or acquiesced in such transfers, or accepted any of the benefits arising from the ownership of the stock thus put in her name on the books of the bank, she was liable to be treated as a shareholder, with such responsibility as the law imposes upon the shareholders of national banks."

Approval, ratification and acquiescence all presuppose the existence of some actual knowledge of the prior action and what amounts to a purpose to abide by it. *Owings* v. *Hull*, 9 Pet. 607, 629; *Western National Bank* v. *Armstrong*, 152 U. S. 346, 352; *Glenn* v. *Garth*, *supra*. When

defendant in error signed blank powers of attorney she did not know what her husband had done and certainly entertained no purpose to approve transfer of the certificates to herself. She thought she was merely doing something to enable him to correct his avowed mistake and nothing else. Nobody was misled or put in a worse position as the result of her act. "As between the original parties that could not be deemed a ratification which was accompanied by a refusal to ratify, and a declared purpose to undo the unauthorized act. The form adopted, by itself and unexplained, would tend to an inference of ratification, but it is not left unexplained. The actual truth is established, and that truth must prevail over the form adopted as between parties who have not been misled, to their harm, by the form of the transaction as distinguished from its substance." "The presumption which might have flowed from the form of the transaction disappears upon the explanation made, and in view of the substantial truth proved by the evidence." *Glenn* v. *Garth*, *supra*, 36, 37.

The record reveals no material error and the judgment below is

Affirmed.